

105-3  
No. 2905

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IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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CLALLAM LUMBER COMPANY, a Corporation,  
Plaintiff,  
*Appellant*

vs.

CLALLAM COUNTY, a Municipal Corporation, and  
CLIFFORD L. BABCOCK, Treasurer, De-  
fendants,  
*Appellees*

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RECORD ON APPEAL

(In Four Volumes)

Vol. 4—Pages 763 to 854

ON APPEAL FROM THE UNITED STATES DIS-  
TRICT COURT FOR THE WESTERN  
DISTRICT OF WASHINGTON, NORTHERN  
DIVISION.

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SHERMAN PRINTING AND BINDING CO., SEATTLE, WASH.

Filed

JAN 2 - 1917

F. D. Monckton,  
Clerk.



# EXHIBIT E PROPERTY VALUATIONS

Dist. No. 1.	2	5,500
Block 1 Tidelands West	3	5,000
of Laurel Street.	4	4,000
Lot Val.	5	4,000
1 \$18,000	16	6,000
2 12,000	17	6,000
3 10,000	18	6,500
4 10,000	19	7,500
5 10,000	20	10,000
6 10,000		
7 10,000		62,000
8 10,000		
9 10,000	Blk 15 Town	
10 12,500	1	18,000
	2	14,000
	3	12,000
112,500	4	12,000
Block 1 East of Laurel	5	12,000
Street	6	12,000
1 12,500	7	12,000
2 10,000	8	12,000
3 10,000	9	12,000
4 10,000	10	15,000
5 10,000	11	10,000
6 10,000	12	7,500
7 10,000	13	7,000
8 12,500	14	7,000
9 18,000	15	7,000
	16	7,000
103,000	17	7,000
Block 2 East	18	7,000
6 2,500	19	8,000
7 3,000	20	12,000
8 4,000		
9 7,500		210,500
17,500	Blk 16 N. R. Smiths	
Block 14 Townsite Pt.	Subd.	
Angeles	1	6,500
1 7,500	2	5,000
	3	6,500

## Clallam Lumber Company

4	7,500	9	7,500
5	8,500		<hr/>
6	9,000		57,000
7	12,000	Blk 30 N. R. Smiths	
8	12,000	8	3,000
9	18,000	9	3,000
10	18,000		<hr/>
11	8,000		6,000
12	7,000	Dist. No. 2	
13	7,000	Blk 2½ East	
14	7,000	1	1,000
15	7,000	2	750
16	7,000	3	600
17	7,000	4	500
18	9,000	5	400
	<hr/>	7	750
	159,000		<hr/>
Blk 17 N. R. Smith			4,000
8	1,200	Blk 3 East	
9	5,000	1	2,500
10	6,000	2	1,500
11	4,500	3	1,500
	<hr/>	4	1,500
	16,700	5	1,500
Blk 32 N. R. Smiths		6	1,500
2	4,500	7	1,500
3	4,500	8	2,000
4	4,500	9	3,000
5	4,500		<hr/>
	<hr/>		16,500
	18,000	Blk 3½ East	
Blk 31 N. R. Smiths		1	750
1	7,500	2	500
2	6,000	3	500
3	6,000	4	500
4	6,000	5	500
5	6,000	6	500
6	6,000	7	500
7	6,000	8	500
8	6,000	9	750
			<hr/>
			5,000

Blk 4 East		5	500
1	1,500	6	500
2	1,250	7	500
3	1,250	8	500
4	1,250	9	750
5	1,250		5,000
6	1,250	Blk 6 East	
7	1,250	1	750
8	1,500	2	500
9	2,000	3	500
		4	500
	<hr/>	5	500
	12,500	6	500
Blk 4½ East		7	500
1	750	8	500
2	500	9	750
3	500		
4	500		
5	500		<hr/>
6	500		5,000
7	500	Blk 6½ East	
8	500	1	750
9	750	2	500
		3	500
	<hr/>	4	500
	5,000	5	500
Blk 5 East		6	500
1	1,250	7	500
2	1,000	8	500
3	1,000	9	750
4	1,000		
5	1,000		<hr/>
6	1,000		5,000
7	1,000	Blk 7 East	
8	1,000	1	2,000
9	1,500	2	1,500
		3	1,500
	<hr/>	4	1,500
	9,750	5	1,500
Blk 5½ East		6	1,500
1	750	7	1,500
2	500	8	1,500
3	500	9	2,000
4	500		
			<hr/>
			14,500



2	2,500
3	2,500
4	2,500
5	3,000
6	3,000
7	3,000
8	3,000
9	3,000
10	4,000
11	3,000
12	2,500
13	2,500
14	2,500
15	2,500
16	2,500
17	2,500
18	3,500

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51,500

Blk 30 N. R. Smiths

1	4,000
2	4,000
3	4,000
4	3,500
5	3,500
6	3,500
7	3,500

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26,000

Blk 29 N. R. Smiths

1	4,500
2	3,500
3	3,500
4	3,500
5	3,500
6	3,500
7	3,500
8	3,500
9	4,000

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33,000

Blk 28 N. R. Smiths

1	4,500
2	3,500
3	3,500
4	3,500
5	3,500
6	3,500
7	3,500
8	3,500
9	4,500

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33,500

Blk 27 N. R. Smiths

1	4,000
2	3,000
3	2,500
4	2,500
5	2,500
6	2,500
7	2,500
8	2,500
9	4,000

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26,000

Dist. No. 4

Blk 30 N. R. Smiths

10	2,500
11	1,500
12	600
13	600
14	500

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5,700

Blk 31 N. R. Smiths

14	2,000
15	3,000
16	3,000
17	3,000
18	4,000

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15,000

## Clallam Lumber Company

Blk 54 Townsite		8	2,000
1	2,500	9	2,500
2	2,000	10	2,000
3	2,000	11	1,500
4	2,000	12	1,500
5	2,000	13	1,500
10	2,000	14	1,500
11	1,000		
12	1,000		16,500
13	1,000	Blk 69 Townsite	
14	1,000	1	1,500
15	1,000	2	1,500
16	1,000	3	1,500
17	1,000	4	1,500
18	1,000	5	1,500
		6	1,500
	20,500	7	1,500
Blk 55 Townsite		8	1,500
5	1,000	9	2,000
6	1,500		
7	1,500		14,000
Supplemental List of the North half of Blocks 1 and 2			
East and 1 West of Laurel St. Dist. 2			
Blk 1 West		6	3,000
1	4,000	7	3,000
2	3,000	8	3,000
3	3,000	9	3,000
4	3,000	10	4,000
5	3,000		
6	3,000		33,000
7	3,000	Block 2 East	
8	4,000	1	2,500
9	5,000	2	2,000
		3	2,000
	31,000	4	2,000
Block 1 East		5	2,500
1	5,000	6	2,500
2	3,000	7	2,500
3	3,000	8	3,000
4	3,000	9	4,000
5	3,000		
			23,000



We, the undersigned residents and property owners of Port Angeles, Washington, being conversant and familiar with the values of the property in said City, hereby certify that we have carefully appraised the several parcels of property shown on the attached list and to the very best of our judgment and belief the amount set opposite each parcel of property is the true and actual value thereof.

G. M. Lauridsen.

Robert D. Willson.

Samuel J. Lutz.

Julius I. Kirschberg, Pres. P. A. Commercial Club.

Thos. R. Aldwell.

A. A. Smith.

D. E. McGillivray.

S. W. Pearce, Secty. Com. Club.

Frank P. Fisher.

State of Washington, County of King—ss.

E. PIERSON being duly sworn, says: That he is a resident of the City of Seattle and that his profession is commercial photography. That on April 30, 1914 he made the photograph of a statement of real estate values in Port Angeles, Washington, entitled "Property Valuations", and attached hereto and that the same is a true and correct reproduction of the original furnished him by Mr. Earle of the firm of Earle & Steinert, Seattle, Washington.

E. PIERSON.

Subscribed and sworn to before me this 8th day of May, 1914.

(Seal)

DAN EARLE,

Notary Public in and for the State of Washington  
residing at Seattle.

Indorsed: Plaintiffs Exhibit "E". Filed September 3, 1915.

PLAINTIFF'S EXHIBIT L  
JOHN C. HANSEN, Port Angeles, Wash.  
CLALLAM COUNTY  
Board of County Commissioners.

Frank Lotzgesell, Jas. F. Clark, John C. Hansen,  
Chairman.

Port Angeles, Wash., May 8, 1914.

Mr. E. H. Grasty,  
Portland, Oregon.

Dear Sir:

Replying to your inquiry, why is there such a difference in actual valuations and assessed valuation on Clallam County property, you particularly refer to lots 15-16-17-18 Block 16 N. R. Smith Subdivision. My personal knowledge as to these lots I would say, will now sell from \$9,000.00 to \$9,500.00. They are assessed on an average of \$700.00. I have been for the passed three years and am now a member of the Board of Equalization for Clallam County, and I will give you the reasons why there is such marked difference. In the first place Port Angeles has always been a very quiet side tracked city, and it has always had and has now a population that has always had confidence in its future, that its location and large Timber resources must some day make a city of considerable size, for that reason property of the above nature has always sold at a good round figure, but as there never was an income from it, the Assessor has always borne in mind that he could only assess such property according to what it ought to pay, without damaging the owner of none income property. During my time in office we have gone over the tax roll every year and always have upheld the Assessor in his judgment and taken the same view of it. Most all of Port Angeles property is in the hands of people of small incomes and that has always had its weight with the assessor, there has never been a disposition to drive any property holder to the wall. If you will take time and look over the records just being completed by the assessor, you will find that he has made raises for this year only in such places where he was compelled to do so on account of its selling value.

The above statement also holds good for lots in Block 20 Townsite of Port Angeles, lots in that block are worth from 3,000.00 to 3,250.00 and assessed at

about 300.00. I can take all over this city and show you that the same conditions exists in any part of the city and so long as the assessment is equal we are satisfied, so far we have always had enough revenue to pay running expenses, the only time this city run behind was in the early days before there was very much property to tax.

Hoping that the above information is as complete as you require and if not, that you will call on me for further information, I am,

Yours very truly,

J. C. HANSEN,  
President Board of Equalization.

Indorsed: Plaintiffs Exhibit L. Filed September 4, 1915.

PLAINTIFF'S EXHIBIT M

C. L. Babcock, Treasurer. S. E. Stakemiller, Deputy.  
D. J. Kelly, Deputy.

OFFICE OF  
TREASURER OF CLALLAM COUNTY.

Port Angeles, Wash., April 29th, 1914.

Mr. E. H. Grasty,  
Portland, Ore.

Dear Sir:

In regard to the valuation placed upon the assessment rolls by the County Assessor for taxation purposes of Clallam County for the City of Port Angeles.

The people of Port Angeles have been afraid of high taxes and believed that if the valuation of former years was raised to any where near the true value of property at the present time their taxes would increase in like manner and the Assessor has been influenced by their attitude.

As a matter of fact nearly all the lots in Port Angeles are now upon the rolls at from 10 to 20% of their true value and consequently the tax levy is very high nearly to the limit in every taxing district.

Out of town investors are appalled at our high levy but if the valuations were raised to some-where near their true value and the levy reduced in accordance, I

think 'am sure our taxes would not look so high and would compare very favorably with other towns of like population of Port Angeles.

Very respectfully,

(Signed) C. L. BABCOCK,  
Treasurer of Clallam County.

Indorsed: Plaintiffs Exhibit M. Filed September 4, 1915.

#### PLAINTIFF'S EXHIBIT N

LEWIS LEVY,  
Real Estate Broker,  
Established 1888.

Port Angeles, Washington, April 29, 1914.

Mr. E. H. Grasty,  
Portland, Oregon.

Dear Sir,

With reference to land and lot values in Port Angeles.,

1st, I wish to say that within the last two years values have doubled.

2nd, Our assessment of land values is made every two years, the last assessment being made in the year 1912.

3rd, We keep land values for assessment purposes down at extremely low figures, for the following reasons,

A. The state of Washington makes it's rate according to it's needs and takes a big slice out of our treasury, and we get nothing in return for same.

B. The same applies to our County, it comes in with a levy, and takes a lot of money from us, for which the City of Port Angeles gets nothing in return directly, hence we work dilligently to keep our assessed valuation of city property down, hence our assessment values are therefore not based on actual values whatever, we pay no attention to actual values when assessment for taxation purposes is made. The above statement solves the question of values.

I herein inclose the application of Mr. Meyer Krupp for a loan.

With reference to my corner as to an all cash proposition, my reason for all cash is this, I have other good locations in town, which I desire to build upon, and as I am reluctant to go into the market of borrowing money, hence I would rather give a fair discount on all cash proposition, my price is \$30,000.00 Cash, the purchaser to pay all improvement taxes, and pay for the raising of the buildings, which may amount to \$800 to \$1,000 and subject to the leases now on some of the buildings, which expire, July 1, 1915. The greater portion facing on Laurel Street, is not leased, about 80 by 85 feet, part of this I can lease immediately at a good rental. But this deal, if it is to be made, must be made on or before May 23, 1914 and a substantial deposit made on the property, in the Bank of Clallam County, here, on or before May 23, 1914. If you make the sale and the transaction is carried to a successful issue, you will receive Ten per cent commission for concluding the sale.

Very truly yours

LEWIS LEVY.

Indorsed: Plaintiffs Exhibit N. Filed September 4, 1915.

PLAINTIFF'S EXHIBIT P

C. J. Farmer, President. J. P. Christensen, Cashier.  
J. M. Lauridsen, V-Pres. Conrad Luppen, Asst. Cash.

CITIZENS NATIONAL BANK

of Port Angeles, Washington.

Port Angeles, Wash., April 29th, 1914.

Mr. E. H. Grasty,  
Portland, Oregon.

DEAR SIR:

When in our bank we talked about Real Estate values here in the city and county, and you requested of the writer a letter setting forth my opinion on the subject.

Real Estate values here have doubled, in many instances they have trebled, since the last assessment for taxing purposes in 1912. The reason for this increase in values is due to an industrial activity and its



natural consequence, an influx of population of the county and city as well.

About a year ago the Chicago, Milwaukee R. R. system made overtures for railroad building into the peninsula, and have since let a contract for the construction of their road from a point on the Puget Sound to about 30 miles west of the city, work on this branch is now under way. Following close on the material evidence of a transcontinental railroad the Puget Sound Mills and Timber Company financed the erection of their large Mill plant with Peabody, Hotaling & Co. of Chicago to the extent of  $1\frac{1}{2}$  Millions of Dollars; likewise the Olympic Power Company financed their big million dollar plant west of the city for supplying the cities of the peninsula with Light and Power. All of this have added materially to the wealth of the city and county and it has doubled our population.

Real estate values took a decided jump and in many instances property sold ten times as high as it had been selling for a year ago, but eliminating the question of boom values the writer may truthfully say that Real Estate values have doubled during the past two years.

It has been the custom in past years that the assessor of the county assessed property at a nominal value, or about 30% of the actual value of the property, accordingly I would estimate that present market values approximately would be six times the present assessed valuation of Real Estate for taxation purpose. This of course is meant in a general way and may not apply to each separate case.

I beg to remain

Very truly yours,

J. P. CHRISTENSEN,

Cashier.

Indorsed: Plaintiffs Exhibit P. Filed September 4, 1915.

## PLAINTIFF'S EXHIBIT F

Thos. T. Aldwell. D. L. Haggith.

Estates Managed Investments Made for

Valuation Made Non-Residents.

Rents Collected Loans Negotiated

THOS. T. ALDWELL &amp; CO.

Incorporated

Real Estate and Investments. Fire Insurance.

Surety Bonds. Head Office: Olympic Power Co.

Port Angeles, Washington April 29th, 1914.

Mr. E. H. Grasty,  
Portland, Oregon.

Dear Sir:

Referring further to our conversation regarding the property values, etc. in this City, I am enclosing you a list of the valuations which is gotten up and certified to by both our Banks, and several other prominent citizens as being a fairly conservative valuation of the property in our business district. A committee was appointed and a list of values made for the purpose of getting as near as could be, the actual valuation of the property in this district, and the necessity for this was occasioned to a considerable extent by the fact that the assessed valuation on this property was so low that it was considered that it might work a hardship on the City in disposing of the improvement Bonds. The assessed valuations in this City have been kept down as low as possible for two reasons; first; to stop any too excessive improvement and, secondly; to save the extra proportion which we would have to pay, of the State and County taxes. The assessed valuation will be materially increased this year.

I am giving you this information as after thinking over our former conversation, I think it will be most interesting to you to know the real facts. In this connection, I might say that these improvement Bonds amounted to about \$200,000 and were slightly in excess of the assessed valuation but the Bond buyers carefully looked into the values of the property back of the Bonds, and after a thorough investigation, the Assets Financing Company purchased these bonds

for 96c. Peabody-Houghteling made an offer of 95c and probably would have given better, but the other people had secured the purchase. I understand that they have since resold these Bonds at a fair profit.

During the past two or three years, the values of the property in this City and vicinity have increased considerably but there has been a substantial reason for the increase. One reason being that the Olympic Power Company have installed a Hydro-Electric Plant, at a cost of \$1,350,000, with turbines and generators capable of a capacity of 8000 net electrical Horsepower. In this connection I am inclosing you a circular of Peabody-Houghteling & Company, describing the Bond issue which they took on this Plant, which gives a further description of it.

The Puget Sound Mills and Timber Company have just completed the construction of a mill which will cut 400,000 feet of lumber per day. The Insurance Surveyors who have just examined it, state that it is the best equipped mill on the Coast. This Mill alone will give employment to about 800 men directly and indirectly. Besides this Mill which has just been completed, the Merrill and Ring people, who are large lumbermen, and the Lacy people, who also have large holdings, are starting in to log their timber, and are seriously considering establishing mills at Port Angeles.

The Milwaukee Land Company, a subsidiary company of C. M. & St Paul, also have large holdings in this County, of which a great quantity of the timber will have to be sawed in this City.

According to Government reports and other reliable data, there are 60,000,000,000 feet of lumber in this County. The reason why the mills will have to build at Port Angeles is that logs can be delivered at Port Angeles at a saving of at least \$1.00 per thousand feet, as compared with the cost of transporting them to mills at Bellingham, Everett, or Seattle, and they will command the same freight rates as those shipped from Seattle, or other Sound Ports.

We have just succeeded in getting through Con-



gress, an Act granting to the City of Port Angeles, a ninety-nine year lease of the Spit, which will make two miles of factory sites which we will be able to lease at a nominal price. The details of this lease are being worked out now.

The Chicago, Milwaukee & St. Paul Railroad is now constructing a road East and West of the City, and they have assured Mr. Earles, of the Puget Mill Company, that the road will be completed 27 miles West of Port Angeles, before the first of July. They are also doing work on their eastern extension, but the work on this is not progressing as rapidly as on the Western division at this time, but our Citizens raised them a \$85,000 bonus to help in this construction, and also gave them a Right of Way, and their receiving the bonus requires them to have the eastern extension completed by January 1st next. Our citizens here also, I might add, donated a greater portion of the Puget Sound Mill site, raising locally \$35,000 for this purpose, which makes \$120,000 of a bonus which our young City raised, inside of two months. When this railroad is completed to its Eastern destination, which will be at first by way of ferrying to Seattle by either Oak Bay or Port Ludlow, and when completed it will help vastly in the development of our County.

The butter made by our creameries yearly, amounts to 1,400,000 lbs. and as you have no doubt seen by travelling over our County, that the ground is hardly yet scratched, and the improvement is going on very rapidly and this steady source of income will greatly increase within the next few years. The completion of the railroad will also make this Port the headquarters of the Fishing Industry as they will be able to tranship their fish here into the cars and save the time consumed in going to and returning from Seattle, and also the extra ice which would be required to make that trip, purchasing the ice and loading the fish on the cars here. This industry we believe, will materially assist in building up our town.

We also have added a great number to our population by reason of this being considered an ideal spot

to live. Our rainfall here being 29 inches, which is 25% less than Seattle rainfall. We have an ideal townsite; a very equitable and pleasant climate and being near the Olympic Mountains Lake Crescent and Sutherland, and Sol Duc Hot Springs, makes it very attractive for a home for people who are seeking a semi retired life, a great many people of this class have settled here, coming from western Canada and some our western States. By reason of the above mentioned reasons, and others which could be mentioned, our population has about doubled in the last two years, being now between 5,000 and 6,000 while according to the last census we only had about 2200. Every available house and also every store room is in use, and there are over 150 families living in tents and there is a demand for business locations which will cause the construction of several business blocks as soon as the grading is completed.

All tourists travelling to the Sol Duc Hot Springs have to tranship at Port Angeles. Last year these springs had a capacity of between 400 and 500 guests, and were filled up to their capacity during all the summer months, and these springs are rapidly growing in popularity.

Residence lots are worth from \$200.00 to \$1500.00 according to location.

Trusting this information may be of service to you, and if there is any other point upon which you desire information, you will please consider me at your service.

Very respectfully,

THOS. T. ALDWELL.

TTA/OB

Indorsed: Plaintiffs Exhibit F. Filed Sept. 3, 1915.

PLAINTIFF'S EXHIBIT CC  
TREASURER'S VOUCHER LIST

.....Redeemed and Cancelled by County Treasurer,  
from.....190.... to .....190....

Lot	Block	Assessed Valuation	Worth
Townsite of Port Angeles—			
4 and 5	276	180	800
5 and 6	380	170	600
8 and 9	338	160	600
9 and 10	189	70	400
7 and 8	141	60	350
16-18-19-20	437	85	400
Subs. of Townsite of Port Angeles—			
6	57 Leightons Sub.	230	950
E½ 16 all 17-18-6	P. S. C. C. Sub.	135	750
4	7 “ “ “	30	125
3	9 “ “ “	50	275
1 to 5-10 and 11	D Glovers “	165	700
Lot 7 Blk. Section 11			
“ 12 Section 12. Township 28, North			
Range 15 West		740	1080
NW. SE. and SE. NW.			
Sec. 22, Township 30 North, Range 12			
West		425	640
		<hr/>	<hr/>
		2500	6670

Property of C. C. Henry, Port Angeles. Assessed  
Value and also Mr. Henry's Appraisal.

E. H. GRASTY.

Indorsed: Plaintiffs Exhibit CC. Filed September 13, 1915.

PLAINTIFF'S EXHIBIT FF  
IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASH-  
INGTON. NORTHERN DIVISION.

Clallam Lumber Company, et al.,  
Plaintiffs.

vs.

Clallam County, et al.,

Defendants.

No. 36 37 56 57

PERSONAL PROPERTY ASSESSMENTS OF  
SHINGLE MILLS IN CLALLAM COUNTY,  
WASHINGTON.

## PERSONAL PROPERTY

	1912		1914	
	Assessment		Assessment	
	Detailed List		Detailed List	
	No.	Val.	No.	Val.
Filion Mill & Lbr. Co.	309	\$4620	351	\$4365
	310	\$ 150	352	\$ 150
	311	\$3750	353	\$3750
		<hr/>		<hr/>
		8520		8265
Hanson & Glauert Shingle Co.	417	\$ 675	505	\$1060
Sturtevant & Pellerin	906	\$1425	1130	\$1475
E. R. Wait Shingle Co.	971	\$ 500	1204	\$ 700
Howell-Hill-Ray Shingle Co.	Not listed		501	\$1590
Skavdal Lbr. & Shingle Co.			1076	\$1500
Brown & Drury	Not listed		111	\$1200
Riverside Lbr. Co.	Not listed		996	\$1375
Puget Sound M. & T. Co. at Pt. Crescent				
Mason Mill Co.				\$ 700
McKee Box Factory				\$ 100
Superior Shingle Co.				
Eacreet Mill				
Port Crescent Shingle Mill				\$3260

Indorsed: Plaintiffs Exhibit FF. Personal Property Assessments of Shingle Mills in Clallam County.

PLAINTIFF'S EXHIBIT T  
IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT  
OF WASHINGTON. NORTHERN  
DIVISION.

Clallam Lumber Company, et al.,  
Plaintiffs.

vs.

Clallam County, et al.,

Defendants.

No. 36 37 56 57

TABULATED STATEMENT OF REAL AND  
PERSONAL PROPERTY ASSESSMENTS OF  
OLYMPIC POWER COMPANY

REAL AND PERSONAL PROPERTY OF  
PUGET SOUND MILLS & TIMBER COM-  
PANY'S "BIG MILL" AT PORT ANGELES,  
WASHINGTON

PERSONAL PROPERTY ASSESSMENT OF  
THE BANKS OF CLALLAM COUNTY  
OLYMPIC POWER COMPANY

Personal Property 1914

List No.	Total Val. as Equalized	Road Dist.	Sch. Dist.
901	\$ 1760	c2	7
902	56280	2	46
903	1200	2	2
904	1200	2	7
905	400	2	300
906	1200	1	300
907	1200	1	53
908	1600	1	301
909	400	Sequim	3/302
910	1600	1	3/302
911	1600	1	11
912	1200	1	32

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\$69640

DESCRIPTION OF LISTS

901	"4 miles"	902	
903	3 "	Work horses 6	650
904	3 "	Wagons 1	30
905	1 "	Prop. of x Light, Power	
906	3 "	xx service concerns	
907	3 "	including fran-	
908	4 "	chises	53100
909	1 "	All other items of	
910	4 "	pers. prop.	2500
911	4 "		
912	3 "		<hr/> \$56280

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33 " Total Val. \$13360

## OLYMPIC POWER COMPANY

Sec. 15, Two. 30 North, 7 West		Plant in 15-30-7	
		Improve-	
		Land	Total
Olympic Power Co.	NW NE	\$270	270
	N $\frac{1}{2}$ SE NE		
	SE SE NE		
	E $\frac{1}{4}$ SW SE		
T. T. Aldwell	NE (35A)	280	280
Olympic Power Co.	SW NE	400	2000 2400
"	Lot 2	450	450
"	Lot 3	635	635
	E $\frac{1}{2}$ E $\frac{1}{2}$		
"	NW SW	340	340
	W $\frac{1}{2}$ E $\frac{1}{2}$		
Thos. T. Aldwell	NW SW	340	340
Thos. T. Aldwell	W $\frac{1}{2}$ NW SW	675	675
Olympic Power Co.	Lot 4	590	590
Olympic Power Co.	SW SW	850	850
		4830	6830
21-30-7			
Olympic Power Co.	NE NE	765	765
	S $\frac{1}{2}$ NE	1010	1010
	SE	1650	1650
	SE SW	640	640
22-30-7			
Olympic Power Co.	Lot 1	760	760
"	NW NW	665	6 65
	Lot 2	400	400
	SW NW	600	600
	NW SW	810	810
		7300	7300
1914 Rolls			
28-30-7			
		Olympic Power Co.	
	N $\frac{1}{2}$ NE	700	700
	W $\frac{1}{2}$ SE NE	80	80
	SW NE	400	400
	NE NW	365	365



	SW NW	315	315
	That part of NW SE W of Elwah River	200	200
	That part of SW SE W of Elwah River	100	100
33-30-7			

		Olympic Power Co.	
	NE NW	300	300
	SE NW	500	500
		<hr/>	<hr/>
		2960	2960
Total of Olympic Power Company's real estate as-			
essments in Clallam County for 1914			\$13,795.00
1914 Rolls			

## PERSONAL PROPERTY

Puget S. Mills &amp; T. Co.

Detail List		Road Dist.	Sch. Dist.
974	\$87450	C 2	7
975	880	2	5
976	690	2	5
977	7000	2	5
978	700	2	37
979	8335	2	5

Road Dist. C 1 down town and sub div. prop. in  
TownsiteRoad Dist. C 2 outlying parts of townsite (including  
Mill)

## DESCRIPTION OF LIST

List. No.

974

C 2 No. 7

Horses, 6 .....	480
Wagons .....	50
Autos .....	400
Office furn. etc., etc.....	1000
Harness .....	20
Pile Drivers .....	500
S. S. Wallowa Rollo.....	5000
Shingles .....	1000

Goods and Merchandise.....	2000
Implements and mach. ....	75000
Lodging houses .....	1000
Water Service Concerns.....	1000

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\$87450

### TIDELANDS WEST OF LAUREL STREET

Blk.	1910	1912	1914		
Fr. 14	540 1000	1540 : 450	1500	1950 : 600	
Fr. 15	750	750 : 800		800 : 1400	
Fr. 16	725	725 : 650		650 : 1400	20,000 23,930
Fr. 17	200	200 : 100		100 : 150	
				300	

### SAMPSON TRACTS:

Blk.

D 10 A	1050 5000	1400 5000	7000 : 4500	13,000	17,500
D	450	6500 : 600			
	150	200	700 : 1500		1,500
E	450	600 : 500			
F	1500	1500 : 2000	2000 : 4500		4,500
Vacated parts of R. R. Ave. between E line of					
Lot D & E, line K. St.					1,500

1912

Total Improvements .....	\$ 6500.00
Total Real Estate .....	6700.00

1914

Total Improvements .....	33000.00
Total Real Estate.....	14430.00 15,930
	1500.00

1914

Total of Real Estate of "Mill	
Property" .....	47430.00
	1500.00

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48930.00

1910 Rolls

### PERSONAL PROPERTY

Bank of Clallam County

Total value of all personal property listed by  
assessor .....\$3,000.00

Office Furniture .....\$1,000.00

Capital Stock of Incorporated banks 2,000.00



1910

## CITIZENS NATIONAL BANK

Total value of all personal property listed by  
 assessor .....\$3,000.00  
 Office Furniture .....\$1,000.00  
 Capital Stock of Incorporated Banks 2,000.00

1912

## BANK OF CLALLAM COUNTY

Total value of all personal property listed by  
 Assessor, listed as capital stock of incor-  
 porated banks .....\$3,000.00

## CITIZENS NATIONAL BANK

Total value of all personal property listed by  
 Assessor, listed as capital stock of incor-  
 porated banks .....\$3,000.00

## STATE BANK OF SEQUIM

Total value of all personal property listed by  
 Assessor, listed as capital stock of incor-  
 porated banks .....\$1,200.00

1914 Rolls

## PERSONAL PROPERTY

Total value of all personal property listed by  
 Assessor as capital stock of incorporated  
 banks:

Bank of Clallam County.....\$3,000.00  
 Citizens National Bank ..... 3,000.00  
 Port Angeles Trust & Sav. Bank..... 2,000.00  
 State Bank of Sequim..... 1,200.00

Indorsed: Plaintiffs Exhibit T. Filed Septem-  
 ber 10, 1915.

Nos. 36-56-37-57

ASSESSMENTS, BANK STATEMENTS, AND  
 EXCERPTS FROM TESTIMONY RELATIVE  
 TO CLALLAM COUNTY BANKS  
 ASSESSMENTS ON BANKS OF CLALLAM  
 COUNTY

1910 Rolls

## PERSONAL PROPERTY

## BANK OF CLALLAM COUNTY

Total value of all personal property listed by  
 assessor .....\$3,000.00

Office furniture .....\$1,000.00

Capital stock of incorporated banks 2,000.00

1910

### CITIZENS NATIONAL BANK

Total value of all personal property listed by  
assessor .....\$3,000.00

Office furniture .....\$1,000.00

Capital stock of incorporated banks 2,000.00

1912

### BANK OF CLALLAM COUNTY

Total value of all personal property listed by  
assessor listed as capital stock of incor-  
porated banks .....\$3,000.00

### CITIZENS NATIONAL BANK

Total value of all personal property listed by  
assessor listed as capital stock of incor-  
porated banks .....\$3,000.00

### STATE BANK OF SEQUIM

Total value of all personal property listed by  
assessor listed as capital stock of incor-  
porated banks .....\$1,200.00

1914 Rolls

### PERSONAL PROPERTY

Total of all personal property listed by asses-  
sor as capital stock of incorporated banks :

Bank of Clallam County.....\$3,000.00

Citizens National Bank ..... 3,000.00

Port Angeles Trust & Sav. Bank.... 2,000.00

State Bank of Sequim.....1,200.00

### EXCERPTS FROM TESTIMONY RELATING TO

#### CLALLAM COUNTY BANKS

#### BANK OF CLALLAM COUNTY

The average rate of interest on the loans of this bank is about 7%. (See Deposition of Mr. Lutz p. 96). The interest on warrants and bonds is 6%.

No real estate appears as listed in the sworn statement of this bank in either its report of 1912 or 1914.

The item of expense appearing in the report covers all expenses. (Page 97).

#### CITIZENS NATIONAL BANK

The average rate of interest earned by the bank

on its loans is about 8%. (Deposition of Christenson, p. 107.) On bonds and warrants 6½%.

In 1914 the bank paid a 20% dividend. (Page 108.)

## REPORT OF THE CONDITION OF THE BANK OF SEQUIM

March 1, 1912

### RESOURCES

Loans .....	27,313.00
Warrants .....	12,020.68
Banking House, Furniture and Fixtures....	3,980.00
Overdrafts .....	61.92
Cash on hand .....	2,619.72
National City Bank.....	1,561.05
Corn Exchange National Bank.....	227.69
Seaboard National Bank.....	131.50
Expenses .....	467.56
Interest paid .....	46.27

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48,429.39

### LIABILITIES

Capital stock .....	10,000.00
Surplus .....	850.00
Undivided profits .....	456.86
Deposits .....	31,630.65
Demand certificates .....	1,626.29
Time certificates .....	3,865.09

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48,429.39

## BANK OF SEQUIM

December 31, 1912

### RESOURCES

Loans .....	30,140.00
Warrants .....	7,172.85
Bonds .....	1,570.25
Banking House, Furniture and Fixtures....	4,082.47
Overdraft .....	8.88
Real Estate Loans .....	5,385.50
Cash .....	4,776.30
National City Bank .....	16,160.70

Corn Exchange National Bank.....	1,361.75
	<hr/>
	70,658.70

## LIABILITIES

Capital Stock .....	10,000.00
Surplus .....	1,000.00
Undivided profits .....	1,118.12
Deposits .....	51,041.15
Demand certificates .....	2,531.16
Time certificates .....	4,933.59
Certified checks .....	34.68
	<hr/>
	70,658.70

## BANK OF SEQUIM

March 1, 1914.

## RESOURCES

Loans .....	52,001.13
Warrants .....	3,857.39
Bonds .....	8,564.92
Banking House, Furniture and Fixtures....	4,012.50
Real Estate loans .....	7,325.00
Cash .....	1,726.64
Merchants Bank .....	857.42
National City Bank .....	6,768.24
Corn Exchange National Bank.....	766.22
Current Expenses .....	609.93
Interest .....	61.35
Overdrafts .....	312.97
Short accounts .....	3.15
	<hr/>
	86,866.86

## LIABILITIES

Capital Stock .....	10,000.00
Surplus .....	2,000.00
Undivided profits .....	941.14
Deposits .....	64,595.36
Demand certificates .....	1,717.04
Time certificates .....	7,578.64
Certified checks .....	34.68
	<hr/>
	86,866.86

## BANK OF SEQUIM

December 31, 1914

## RESOURCES

Loans .....	40,687.50
Warrants .....	4,009.05
Bonds .....	6,300.00
Banking House, Furniture and Fixtures.....	3,900.00
Real Estate Loans .....	5,725.00
Cash on hand.....	5,285.18
Merchants Bank .....	1,077.43
National City Bank .....	2,560.67
Corn Exchange National Bank.....	1,425.66
Port Angeles Trust & Savings Bank.....	1,400.00
Overdrafts .....	47.11
	<hr/>
	72,417.60

## LIABILITIES

Capital Stock .....	10,000.00
Surplus .....	2,000.00
Undivided Profits .....	906.41
Deposits .....	48,619.76
Demand Certificates .....	648.89
Times certificate .....	9,239.55
Savings Deposits .....	968.31
Certified checks .....	34.68
	<hr/>

Total ..... 72,417.60

REPORT OF THE CONDITION OF THE BANK  
OF CLALLAM COUNTY

March 1, 1912

## RESOURCES

Due from Banks .....	80,514.04
Loans and Discounts .....	132,170.46
Overdrafts .....	1,253.31
Furniture and Fixtures .....	3,000.00
Bonds and Warrants .....	36,732.66
Interest Paid .....	496.22
Expenses .....	763.19
Cash .....	20,255.14
Cash items .....	372.69
	<hr/>
	275,557.71

## LIABILITIES

Total deposits .....	245,476.97
Interest .....	2,035.20
Exchange .....	10.63
Surplus .....	3,000.00
Capital Stock .....	25,000.00
Cash over .....	39.91
	<hr/>
	275,557.71

## BANK OF CLALLAM COUNTY

March 2, 1914

## RESOURCES

Due from banks .....	136,488.49
Real Estate Loans .....	47,127.50
Loans and Discounts .....	176,751.58
Overdrafts .....	816.39
Furniture and Fixtures .....	2,400.00
Bonds .....	29,300.00
Warrants .....	27,207.34
Interest paid .....	804.34
Expenses .....	1,259.72
Cash .....	22,454.37
Cash items .....	1,729.10
Taxes paid .....	66.36
	<hr/>
	446,405.19

## LIABILITIES

Total deposits .....	412,803.15
Interest account .....	2,887.08
Exchange .....	21.40
Surplus .....	5,000.00
Undivided profits .....	693.13
Capital Stock .....	25,000.00
Cash over .....	.43
	<hr/>
	446,405.19

REPORT OF THE CONDITION OF PORT  
ANGELES SAVINGS & TRUST BANK

February 28, 1914.

## RESOURCES

Loans and Discounts .....	6,301.17
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Warrants .....	1,802.14
Furniture and Fixtures .....	1,441.75
Due from Union Savings & Trust Co., Seattle .....	13,612.07
Due from Hanover National Bank, New York .....	997.00
Current Expenses .....	357.49
Cash on hand .....	8,791.73
	<hr/>
	33,303.35

## LIABILITIES

Capital Stock .....	25,000.00
Interest .....	545.72
Total Deposits .....	4,757.63
	<hr/>
	33,303.35

REPORT OF THE CONDITION OF THE  
CITIZENS NATIONAL BANK

At Port Angeles, in the State of Washington at the  
close of business on the 1st day of March, 1912

## RESOURCES

1. Loans and discounts on which officers and directors are not liable as payers or indorsers .....	70,678.65
2. Overdrafts .....	979.74
3. U. S. Bonds to secure Circulation (par value) .....	6,250.00
Stocks, securities, etc., including premi- um on same .....	40,837.13
Banking House; furniture and fixtures....	1,653.51
Due from National Banks (not ap- proved Reserve Agents) .....	31,847.31
Legal-tender notes .....	13,876.05
Redemption Fund with U. S. Treasurer (not more than 5 per cent on Circu- lation .....	312.50
	<hr/>
Total .....	\$166,434.89

## LIABILITIES

Capital Stock paid in .....	25,000.00
Surplus Fund .....	5,000.00



Deposits, et al. ....	129,028.73
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Total .....	166,434.89
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REPORT OF THE CONDITION OF THE  
CITIZENS NATIONAL BANK

At Port Angeles, in the State of Washington at the  
close of business on the 1st day of March, 1914.

RESOURCES

Loans and Discounts .....	111,055.99
Overdrafts .....	402.19
U. S. Bonds .....	6,250.00
Stocks, securities, etc. ....	80,575.09
Banking House, Furniture and Fixtures....	2,019.10
Due from National Banks .....	22,630.73
Lawful money reserved .....	24,108.42
Redemption fund .....	312.50

Total .....	\$247,354.02
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LIABILITIES

Capital Stock .....	25,000.00
Surplus .....	5,000.00
Undivided Profits .....	2,875.71
Circulating Notes .....	6,250.00
Deposits, et al. ....	208,228.31

	\$247,354.02
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Indorsed: Summary of Statement of Banks of Clallam  
County.

Filed December 11, 1915.

Nos. 36 and 56

Nos. 37 and 57

MEMORANDUM DECISION

Filed Jan. 22, 1916

CUSHMAN, District Judge

The four above entitled causes were tried together. They were brought to have the assessment, for the purposes of taxation, made by Clallam County upon the lands of plaintiffs decreed void, and defendants enjoined from collecting the same. Causes Nos. 36 and 37 involve the assessments for the year 1913, and causes Nos. 56 and 57 concern those for the year



1914. The causes are the same in all material respect. There is little controversy concerning the law applicable to the cases, the questions involved being mainly of facts.

Plaintiffs aver that the assessments are void because the timber lands in the eastern part of Clallam County have been, by the assessor, for assessment purposes, arbitrarily laid off—in disregard of the actual value of the lands therein—in certain zones and a fixed value throughout each zone given the different kinds of timber therein.

The assessments are further attacked on account of alleged fraud upon the part of the assessor and Board of Equalization, the substance of the charge in this respect is:

That the Western part of the county is almost entirely timber land owned by non-residents; sparsely settled and containing few voters; that Port Angeles is the county seat and that the bulk of the voting population lives in the central and Eastern part of the county where there is less timber land; that the assessor and other members of the Board of Equalization—save one—are residents and property owners of the central and Eastern part of the county; that it has been the custom to assess property at less than its actual value; that the officers of Clallam County claim to have assessed at fifty per cent of the true value, but that plaintiffs' lands were assessed much higher than fifty per cent—approximately, eighty-four per cent of their full value, while other property of the county was assessed at much less: at Port Angeles from ten to twenty per cent and the farming land in the Eastern part of the county from twenty-five to thirty per cent. (These figures are taken from one of the complaints concerning the 1914 taxes, but do not differ substantially from the complaints in the other suits.) That the overvaluation was not accidental and unintentional, but wilful and in pursuance of a corrupt conspiracy between the assessor and the County Board of Equalization that, for the purpose of ingratiating themselves with the voting population of the Eastern and

central part of the county, they agreed to, and did, increase the assessments upon timber lands in the Western part of the county and decreased that of property in the center and Eastern part thereof, in the former case above, and the latter below, its proportion of the true and fair value of the property in the county; that a further purpose of such conspiracy was to compel the building, by plaintiffs, of mills at Port Angeles, where a majority of the voters live, and the commencement of logging and lumber operations, thereby adding to the growth of that town, in which a majority of the Board of Equalization own property; that the values fixed by the assessor are the result of such conspiracy and do not represent his judgment; that, for the same reason, plaintiffs' protests were arbitrarily disregarded; a fair hearing before the Board of Equalization denied and the assessments approved by such Board as a matter of course.

The material allegations of fraud are put in issue by the answer of the defendants.

Plaintiffs are the owners of a considerable body of timber land in the Western part of Clallam County, almost 50,000 acres. No railroad has as yet penetrated this section and no logging operations have yet been carried on there. The county has caused the timber lands therein to be cruised and the amount of timber—fir, spruce, cedar and hemlock—standing on the different tracts to be determined. The correctness of this cruise is not attacked.

Clallam County lies between the Straits of Juan de Fuca on the North and the Olympic Mountains on the South. It extends along the Straits about eighty miles. The greater part of the remaining standing timber is in the Western part of the county. The lands of plaintiffs are from thirty to fifty miles West of Port Angeles, the county seat; from eight to twenty miles from the Straits and from six to twenty miles from the Pacific Ocean.

A railroad extends from Port Angeles westward about half the distance to plaintiffs' lands. The nearest

railroad from the south, along the shores of the Pacific, is sixty miles distant.

These timber lands lie in the bottoms and on the benches of the Sol Duc and Calawa Rivers. The waters of these rivers run in a southwest direction to the Pacific. There are no booming grounds or harbors on the Pacific to the Westward of these lands and, at present, but small facilities of that nature on the Straits of the North, although a booming ground is being developed by the owners of other timber lands at the mouth of the Pysht River, which, at present, appears to be the best way to get this timber out to market. A range of hills separates the land from the Straits. An available pass in these hills is of the height of 250 feet.

The assessor, for the purpose of determining the value of the lands, as affected by the amount and character of the cruised timber thereon, fixed certain zones. Three of these zones lie along the Straits and one upon the shore of the Pacific and extend back from the shore from four to six miles. The other zones lie to the interior. The boundary dividing the zones on the Straits from those on the South follows section and, in some instances, township lines; but it roughly follows the height of land between the waters flowing to the Straits and those southwest to the Pacific.

The nearest milling and developed harbor facilities, at present, are at Port Angeles.

In the Straits zone nearest this town, which extends twelve miles West of it, in 1914, fir, spruce and cedar were valued by the assessor at \$1.00 per thousand and hemlock at 40c. In the Straits zone to the West of this zone, which extends some thirty miles along the Straits, the values were fixed by him at 90c and 40c. In the three zones to the South of the Straits zones, the values were fixed at 80c and 30c; 50c and 25c; 80c and 40c, while in the last of these zones, which I will designate as "Zone 1," for the reason that it is so numbered on certain of the exhibits, the values, taken together, are higher than either of the other

interior zones, despite the fact that plaintiffs' lands therein are further from Port Angeles and the Straits than the surveyed lands in either of the two zones last mentioned, yet the evidence shows the standing timber is thicker and the contour of the ground better for logging operations than in the other two zones.

In Zone 1, the timber lies along the Sol Duc and lower Calawa Rivers, both flowing to the Pacific. To the South and East of Zone 1, upon the upper Calawa is another zone in which conditions are generally the same as in Zone 1. In this zone values are fixed at 70c and 30c, as against 80c and 40c in Zone 1. But, in taking the timber from this latter zone, if taken to the Pacific, it would have to be taken farther than that in Zone 1. If taken out North, to the Straits, it would have to be taken over a divide separating the Calawa and Sol Duc.

It is apparent that all the foregoing conditions, as well as the amount of timber on the lands, were taken into account in creating these zones. While in one sense it may be said that the boundaries of the zones were arbitrarily fixed, in that a tree immediately upon one side of the boundary could not be said to be more valuable than one immediately upon the other, yet in principle it is not more arbitrary than to assess a man's farm at an even value per acre, disregarding possible differences therein. Plaintiffs' witnesses testified that the Merrill & Ring timber in the coast zone was worth twice as much as plaintiffs' in the two interior zones. This would indicate that there was, to their minds, such a difference as would warrant zone making. What the bounds of the zones should be, how large they should be made and the values to be given the timber in each would be matters of opinion.

I find that the creation of these zones was not unreasonably arbitrary.

*C. B. & Q. Ry. Co. v. Babcock*, 204 U. S., 585;

*Doty Lbr. & Shingle Co. v. Lewis Co.*, 60 Wash., 428;

*Simpson Log. Co. v. Chehalis County*, 80 Wash., 245 at 248.

In the first case above cited, it is said:

"Among them (the arguments on appeal) is the suggestion of arbitrariness at different points, such as the distribution of the total value set upon the Chicago, Burlington & Quincy system, among the different roads making it up. But the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so."

The greater part of plaintiffs' lands lie in the last two mentioned zones. To the North of these lies the middle one of the Straits zones and the one which contains the most of the Straits timber. As shown above, the timber in this zone is assessed at 90c and 40c, which plaintiffs complain is a grossly insufficient increase upon the values put upon their lands.

A great deal of testimony was given upon this question. The number of expert witnesses giving opinions as to values were about evenly divided as between plaintiffs and defendants. Those of defendants may have been shown to have had a greater interest in the cause than plaintiffs', yet those of defendants showed a greater knowledge than plaintiffs' of the lands and timber in question.

The interior timber is further from the Straits than the other, yet the fact that there are but two places on the Straits suitable for booming ground, necessitates a movement for a considerable distance of the greater part of the timber in the Straits zone. It is shown that a great part of the cost in logging is in getting logs upon a logging railroad and, on account of the greater number of ravines and ridges in the Straits zone, logging would be more difficult and with greater waste than in the case of plaintiffs' timber growing upon better ground.

In this respect it is far from clear that plaintiffs were unfairly discriminated against in this particular. Certainly, there is not that clear and certain proof of fraud required.

The plaintiffs mainly depend, to establish fraud in the assessment, upon certain admissions, alleged to have been made by the assessor and members of the Board



of Equalization. A certain Mr. Grasty was in Port Angeles a number of times from February to May, 1914. Mr. Grasty was sent by the plaintiffs to Clallam County, before these suits were begun, to investigate the assessments.

He represented to the people of Port Angeles that he was the agent of financial interests considering the advisability of loaning \$40,000, to build an Elks Lodge building in Port Angeles, and that he and his principals were generally interested in real estate loans. Uniformly, the conversations he had with those interested in seeing these lands made were brought around to the point where the value put on the property by such interested persons was contrasted with the assessed valuations and such persons were then asked, by Mr. Grasty, to explain and justify the difference.

Mr. Grasty and a friend of his by the name of King, whom he brought with him from Portland, had a talk with Hallahan, the assessor, in May, 1914, in which Grasty asked him to explain the discrepancy between the actual value of property in Clallam County and the assessed value. Mr. Grasty testified that Hallahan said:

"Well, we grade the property in the county, and assess it accordingly. Now, we assess timber in the county more than we do anything else."

When asked why, he said:

"x x the reason they assessed the timber higher than they did anything else was because on account of the great fire protection in this state; that the timber owners were holding their timber there, and that they assessed that high taxes in order to make them operate; in other words, to build logging roads and cut their timber."

and, further, the reason they kept their local (Port Angeles) taxes down low was for the purpose of depriving the state and county of taking away from Port Angeles proper any more money than they could possibly help. Also, that it wouldn't do the timber people any good to complain, they were going to be assessed, because they never would operate in Clallam County,

and that the people had lived there so long, unless the people cut their timber, they would always remain in the dormant state that they had been before.

Grasty was corroborated, generally, as to these conversations by King, with one important difference; Grasty testified that Hallahan said:

"Mr. Grasty, if I were to assess the property here (in Port Angeles) for *FIFTY PERCENT*. of its real value, I would break every property owner in Port Angeles and I have been sworn to do my duty."

Mr. King testified that Mr. Grasty asked the question:

"I want to know what the assessed value of Port Angeles property has to do with the real value." to which Hallahan replied:

"x x the assessed value had nothing to do with the real value; that it was assessed for very much less than its real value; that if it was assessed according to its *REAL VALUE*, it would break some of the property holders to pay the taxes."

Hallahan, although asked for a letter by Grasty, made no written statement and contradicts the testimony of Grasty and King. He testified as follows, concerning their statements:

"A. I can't remember the date nor the month that he paid the visit to my office in the forenoon. He handed me his business card and told me that he represented capitalists in Portland, Oregon, and had come down to Port Angeles with the intention and expectation of loaning money to the Elk's Lodge, some forty thousand dollars, to erect a building. He talked along a little while and said further that there appeared to be a vast difference between the assessed value of the property which belonged to the Elk's Lodge and the value placed thereon by the committee of the Lodge.

"THE COURT: By whom?

"A. The lodge committee. I believe he had an appraisal made by that committee, what purported to be an appraisal made by the committee, in his possession; I don't remember, but I believe he had; and he also, either at that time or a subsequent time, had an appraisal made by Mr. Lutz, the cashier of the Clallam

County Bank, and I believe Mr. Christensen, of the Citizens National Bank, at that time, which showed a lower appraisal of the same property.

“Q. A lower appraisal?

“A. A lower appraisal than that placed thereon by the Elk’s Committee, on the same property the bankers placed a lower appraisal. Mr. Grasty seemed to be very enthusiastic about the placing of this loan, and discussed the assessments with me. He inferred that the assessments were very low as compared with the appraisal and that it would be very hard for him to explain to his people down in Portland the difference which appeared to exist, and suggested that I write a letter explaining the situation and send it to Portland, Oregon, to his address. He did not want the letter there at all, although he said in his testimony the other day that I promised to hand it to him in the afternoon. He did not want the letter; he wanted it sent to Portland to his own address.

“Q. Did he say that to you?

“A. Sure he said that to me. That made me suspicious then. I says ‘What kind of a concern do you represent that they have not your confidence? I says, ‘You could not work for me but a short time if I had only that much confidence in you’. And I got suspicious of the fellow right away. He stumbled around the office all forenoon until pretty near noon time, and he got in my way until he became a nuisance around there. We went to the books on the desk and he looked at the assessment for 1912. The 1914—I did not place here—it was in April, I presume when he was in the office, but I had not commenced to place the assessment of the city of Port Angeles for the year 1914, and consequently did not tell him what that assessment would be, because I had not the figures finally placed myself. He stumbled around the office until about noon time, when he invited me to dinner, which invitation I refused. I got suspicious of the fellow and I thought he was too nice to me and too good to me for my own good. He was all smiles and very bland around there, and at the noon hour I went down



on the principal street, the corner of Laurel and Front Street, and I met Mr. Fisher, who he has referred to in his testimony, Frank Fisher. He is deputy collector of customs down there. I knew Mr. Fisher was an Elk, and I told Fisher what this gentleman was saying to me in the office—I told him about his asking me for a letter, and just about that particular minute, he seemed to be watching us, and around he come and butted in to us again.

“Q. Who do you mean, who was this that butted into you?”

“A. This gentleman down here with the gray suit on that gave testimony here.

“Q. Mr. Grasty?”

“A. Mr. Grasty, yes, sir, that is the name of the man who butted into us again, and Mr. Fisher says ‘Hallahan can’t give you any such letter,’ and then finally he passed on after interfering with our conversation for some time, he passed along, and Mr. Fisher told me, he says, ‘Jack’, they call me Jack down there a lot, he says, ‘Jack, that fellow is no good. We have investigated him and he is no good; don’t bother with him no more’. Mr. Fisher told me right there. I did not bother with him any more. I believe that he did come up that afternoon, or the following day at the office again and bothered me some more about this letter, and he did not get no letter at no time, nor did I promise to give him a letter at any time. So, a week or two elapsed, and I, at least, had forgotten all about him, and I went down to dinner—I believe it must have been two or three weeks afterwards—and instead of turning to the West to where I usually eat luncheon, I turned to the East. I can’t account for the fact now, and there was a high concrete wall erected at that time as a bulkhead in the grading district, and Mr. Grasty was standing in the sunshine with another fellow, as I went up he rushed right out and grabbed me by the hand and he says: ‘Hello, Mr. Hallahan, I am glad to meet you’, smiling all over his face, and he introduced Mr. King to me as being the son of one of the financiers in Portland, Oregon. Mr.

King did not impress me as being a financier at the present time. He was not very well dressed, and as far as outward appearances went, would not be a very good looking financial agent. He invited me to dinner again. I believe this was the third time he invited me to dinner. He was bound to have me to dinner, and I had learned by this time from what I had heard that the fellow was no good, and I went along with him to dinner. He grabbed hold of me and I went along and talked about commonplace things during the noon hour, and we come back on the street again, and he would all the time inject this loaning of money to the Elks Lodge. He tried to inject that into the subject of our conversation all the time, and would mention occasionally about the low assessment and the high appraisal put on there by the committee and that letter, that was his story all the time. I believe in the afternoon that he did go back up to the office again to discuss matters further with Mr. King, and that is about the end of the Grasty proposition, so far as I can remember. x x x

"Q. Now, in the conversations that were had between you and Mr. Grasty who led the conversation?

"A. Why he led the conversation.

"Q. Who directed the channels into which they should flow?

"A. He directed them all the time.

"Q. What channels did the conversations always follow?

"A. It followed the subject matter of the loan of forty thousand dollars to the Elks to erect a building.  
x x x

"A. He wanted me to write a letter down to Portland to his address stating that the assessment was low and that the appraisal by the committee was nearer right, something to that effect, I believe he wanted me to say that.

"Q. What did you say to him in reply to his suggestion as to making statements of that sort in a letter?

"A. I told him he could not get any such letter from me, he could not or anybody else.

On Cross-Examination, he testified:

"Q. Did you tell him that it was not a fact that the assessed value differed so much from the real value?

"A. I did not know what the real value of their property was at that time; why should I answer such a question in such a way. I did not know what the real value of that property was. x x x

"A. There may have been a difference between the assessed value and the real value, at that particular time, because he was looking at the 1912 assessment, and this was the year of 1914. x x x

"Q. Didn't you tell Mr. Grasty in the presence of Mr. King substantially that it had been the custom of the assessor of Clallam County to assess the timber lands high in order to force the owners of timber lands to operate?

"A. No, sir, I did not; nor anybody else in Clallam County, nor the State of Washington.

"Q. Or substantially that?

"A. No, sir; I did not say that to Mr. Grasty, or to anybody else.

"Q. You never said that to him?

"A. During my term of office to anybody, to any individual living or dead, no sir, I did not."

Mr. Grasty had several talks with Mr. Hansen, the Chairman of the Board of Equalization—a member of the Board from the central district—who was also a member of the Finance Committee of the Elks Lodge, and testifies concerning them, as follows:

"I asked Mr. Hansen if he would please explain to me the wide difference between the actual value of Port Angeles real estate and the assessed value, and Hansen stated to me:

" 'Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and with our local people we keep these assessments down. We have made it a rule to keep the assessments down, the taxes of Port Angeles property.'

"He said to me: 'We have a lot of timber stand-

ing in this county, owned by eastern interests', and he said: 'It is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles.'"

Hansen also gave Grasty a letter, reading as follows:

"Port Angeles, Wash., May 8, 1914.

"Mr. E. H. Grasty,

Portland, Oregon.

Dear Sir:—

Replying to your inquiry, why is there such a difference in actual valuation and assessed valuation on Clallam County property, you particularly refer to lots 15-16-17-18 Block 16 N. R. Smith Subdivision. My personal knowledge as to these lots I would say, will now sell from \$9,000.00 to \$9,500.00. They are assessed on an average of \$700.00. I have been for the passed three years and am now, a member of the Board of Equalization for Clallam County, and I will give you the reasons why there is such marked difference. In the first place Port Angeles has always been a very quiet side tracked city, but it has always had and has now a population that has always had confidence in its future, that its location and large Timber resources must some day make a city of considerable size, for that reason property of the above nature has always sold at a good round figure, but as there never was an income from it, the Assessor has always bourn in mind that he could only assess such property according to what it ought to pay, without damaging the owner of none income property. During my time in office we have gone over the tax role every year and always have upheld the Assessor in his judgment and taken the same view of it. Most all of Port Angeles property is in the hands of people of small incomes and that has always had its weight with the assessor, there has never been a disposition to drive any property holder to the wall. If you will take time and look over the records just being completed by the assessor, you will find, that he has made raises for this year only in

such places where he was compelled to do so on account of its selling value.

"The above statement also holds good for lots in Block 20 Townsite of Port Angeles, lots in that block are worth from \$3,000.00 to \$3,250.00 and assessed at about \$300.00. I can take all over this city and show you that the same conditions exists in any part of the city and so long as the assessment is equal we are satisfied, so far we have always had enough revenue to pay running expenses, the only time this city run behind was in the early days before there was very much property to tax.

"Hoping that the above information is as complete as you require and if not, that you will call on me for further information, I am,

Yours very truly,

J. C. Hansen,

President Board of Equalization.

Concerning this alleged conversation and the letter, Mr. Hansen testified:—

"Q. In Mr. Grasty's testimony he says: 'I asked Mr. Hansen if he would please explain to me the wide difference between the actual value of Port Angeles real estate and the assessed value, and Mr. Hansen stated to me', 'Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and without local people we keep these assessments down. We have made it a rule to keep these assessments down, the taxes of Port Angeles property.' He said to me, 'We have a lot of timber standing in this county, owned by eastern interests.' And he said, 'It is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles'. What have you to say regarding any such purported conversation?

"A. That is nearly all false, absolutely false.

"Q. What, if any, conversation did you have with Mr. Grasty, concerning non-resident owners of property, and the big timber interests?

"A. Well, I will explain. I am hard to catch.



I am very busy all the time, and a man catches me generally about five minutes, and seven minutes, and ten minutes, and all the talk we have had was about the proposed building, because all of his business was with the finance committee, and he came rushing up to me in the office whenever he could catch me, and was after that letter, and then in order to get rid of the matter as quick as I could, because, like I told you, I have to go out to different places here and there at all times, and I drafted that while he was right in my presence and the matter was disposed of, and I had really forgotten all about it. Neither did I mention to Mr. Babcock at all that I had written such a letter until I heard it was here in Court the other day, or Mr. Hallahan. There was never no conversations between us that I had given any letter to Mr. Grasty. That is as little thought as I had ever given the matter.

"Q. Regarding this alleged conversation between you and Mr. Grasty concerning non-resident property owners and the large timber interests in Clallam County?

"A. That was never mentioned.

"Q. That was never mentioned?

"A. No, sir: we did not even have time to mention it.

"Q. What was your purpose or object in writing this letter to Mr. Grasty?

"A. Entirely for the purpose of receiving the money for the proposed building. We all did all we could, every one of us that was interested; and it would have been a good loan if he would have made it."

In 1912, Darwin, a newspaper reporter interviewed Hansen. Concerning this interview, Darwin testifies:—

"Here is the position Mr. Hansen took. He took the position that the timber men had been getting a smaller cruise; that they returned their timber at less per thousand than there was actual timber on the land; that they had recruised that, and had thereby increased the number of thousand feet, or whatever it was, to the holders, and it jumped up. I forget now; I haven't

read the whole article, but that it jumped from sixty to eighty a thousand, or forty to eighty thousand, or something like that; but it had largely increased the per thousand to the acre, or whatever it was, and that his idea was that they should be—they should also increase their tax rate on that, and this would enable them to build roads and highways and develop their County, and also force the cutting of the timber or the sale of the timber to other parties.

Concerning his conversation with Darwin, Hansen testified:—

“Q. Mr. Hansen, were you in the court room the other day when Mr. Darwin testified for the plaintiff in this case?

“A. I was.

“Q. You heard his testimony?

“A. I did.

“Q. Mr. Darwin said in substance that in an interview with you, in Port Angeles sometime in the spring of 1912, that you said to him that you favored the policy of taxing timber holders so high that they would find it unprofitable to long keep their vast tract off of the market; will you state just what transactions and conversations you had with Mr. Darwin at that time?

“A. Well, I got a telephone message from the Secretary of the Commercial Club that Mr. Darwin was coming to the city on a certain day, and that I was appointed, with E. A. Fitzhenry, who is now United States Surveyor General for the State of Washington, and M. K. Meade, who was then Mayor of the City of Port Angeles.

“MR. PETERS: The plaintiffs make objection to any statement by Mr. Hansen except in answer to the question as to whether he did or did not make a statement imputed by him by Mr. Darwin, and any other inquiry is incompetent, immaterial and irrelevant.

“A. We three were to take Mr. Darwin around and show him the country. So we took an automobile that morning, whatever date it was I do not know, and we started for Lake Crescent; that is in a southwesterly



direction from Port Angeles, and twenty miles away, and on the way we stopped at the Olympic Power Company, which at that time was being built on the Elwah River, the roads to Lake Crescent were not in a very good condition; so the question of roads did come up, were spoken about, and then Mr. Fitzhenry, who has been all over the County many times as an engineer, and so forth, he was telling Mr. Darwin that this County had sixty billion feet of timber. Then the question was referred to me, why we did not have better roads. I told Mr. Darwin that we expected to bond the County that very same fall for three hundred thousand dollars, if it was possible, and about the timber I told him that we had a very small portion of that sixty billion on our tax rolls, and at that time the County had already started to cruise all of the timber and that we had a large portion of logged off land directly west of Port Angeles, on the way to Gettysburg, and Port Crescent, and that timber there in that direction belonging to Michael Earls had all been moved without a proper cruise having been against it, and that even the logged-off land would be so cruised that the County Assessor's office would have a perfect record of every ten acres and that the same policy would extend through the whole County to the Eastern line, farming land and all. And I explained to him then that in 1911 we had attempted to make some raise by the Board of Equalization, but that we were continually confronted with one man saying that this land was good for nothing, and the other man saying it was worth ten or fifteen dollars an acre, so we were absolutely unable to do anything without a better record. And the result of that cruising has placed now the county in such shape that —

“Q. What did you say to him about the cruise? This is a part of your conversation with him?

“A. Yes, sir, that everything was at that time underrated, because the assessor's office was in a poor condition at that time. I do not know what I said there, but I did not say that anything would be fixed higher than any other article, that this cruise was pur-

posely being made for the purpose of equalizing the taxation all over the County. That is about all. I was in the front seat and Mr. Darwin, and Mr. Fitzhenry and M. K. Meade were in the back of the automobile, and the trip took from morning until noon. We came back in time to have our dinner in town at the Commercial Hotel. \* \* \* \*

On cross-examination, he testified:—

“Q. Do you recall what this statement of Mr. Darwin, the present fish commissioner of the State, was: ‘Hansen favors a policy of taxing the timber holders so high that they will find it unprofitable to longer keep their vast tracts off the market’?”

“A. Our work does not bear that out. Our assessment roll does not bear that out.

“Q. I will ask you whether Mr. Darwin in making that statement in the Times newspaper two days after that interview, as testified, stated the truth, or stated what was false?”

“A. He wrote that.

“Q. That is what he said?”

“A. I didn’t write it.

“Q. I ask you if when he stated that in the paper and stated it on the witness stand here whether he was telling what was true, or whether he was telling what was false?”

“A. His expression there is false, when he says that I favored taxing timber so high—does he say that “they will have to operate it and cut it?”

“Q. I am reading it to you in his exact words, “‘Hansen favors the policy of taxing the timber holders so high that they will find it unprofitable to long keep their vast tracts off the market.’”

“A. That is not true.

“Q. Isn’t the substance of it true?”

“A. No, sir; at no time did we go that far, and at that time I did not know enough about timber. I was a new man on the board, and I was learning.

Q. Didn’t you propose to assess the timber high?

A. No, sir, not high.

Q. At what did you propose to assess it?

A. Equally.

Q. Equally.

A. In 1912—I left it entirely to the assessor.”

Mr. Babcock, the County Treasurer and a member of the Board of Equalization, gave Mr. Grasty a letter reading as follows:

“Port Angeles, Wash., April 29, 1914.

“Mr. E. H. Grasty,  
Portland, Ore.

Dear Sir:

In regard to the valuations placed upon the assessment rolls by the County Assessor for taxation purposes of Clallam County for the City of Port Angeles.

“The people of Port Angeles have been afraid of high taxes and believed that if the valuation of former years was raised to any where near the true value of property at the present time their taxes would increase in like manner and the Assessor has been influenced by their attitude.

“As a matter of fact nearly all of the lots in Port Angeles are now upon the rolls at from 10 to 20% of their true value and consequently the tax levy is very high nearly to the limit in every taxing district.

“Out of town investors are appalled at our high levy but if the valuations were raised to somewhere near their true value and the levy reduced in accordance, I think ’am sure our taxes would not look so high and would compare very favorably with other towns of like population of Port Angeles.

Very respectfully,

C. L. Babcock

Treasurer of Clallam County.”

Mr. Babcock, in his testimony, admits writing the letter and admits the truth of the greater part of its contents; but denies the truth of others, testifying:—

“Q. Now, you say in that letter ‘The people of Port Angeles have been afraid of high taxes and believe that if the valuation of former years was raised to anywhere near the true value of the property at the present time, the taxes would increase in like

manner and the assessor has been influenced by that attitude', was that true or was it false?

"A. I think that was largely false. I do not believe that is true. It was true to this extent: that we had just had a flurry and a few lots had been sold extremely high, and I honestly believed at that time that those values were going to continue, perhaps.

"Q. I am not asking you 'perhaps', you did not understand me.

"A. I guess not.

"Q. At the time that you made that statement on April 29, 1914, was it to your knowledge and conscience true or false? \* \* \* \* \*

"A. \* \* I think that was true. I think I believed it was true.

"Q. At the time? A. At the time.

"Q. As a matter of fact, then you did believe on the 29th day of April, 1914, that the people of Port Angeles up to that time had been afraid of high taxes?

"A. Yes, sir.

"Q. And that they had up to that time believed that if the valuation of former years was raised to anywhere near the true value of property at that time, namely, April 29, 1914, that their taxes would increase in like manner and that the assessor had up to that time been influenced by their attitude, you believed that, did you?

"A. I think so.

"Q. And that was true, was it not, at that time?

"A. I thought so at that time.

"Q. How did you think at that time that the assessor had been influenced?

"A. I did not know.

"Q. What effect did that have upon him, these facts you read about?

"A. I presume to keep the valuations down.

"Q. That is, that your view of it at that time was that these facts presented to the mind of the assessor had influenced him to keep the values in Port Angeles down? \* \* \*

"A. I think so, yes sir.

"Q. You thought so then?

"A. Yes, sir.

"Q. You have since found that it was not true?

"A. That what you stated in that way was not true.

"Q. You haven't since found that it was not true \* \* \* That the assessor had been influenced by public opinion to keep the facts (taxes) down upon Port Angeles property?

"A. I don't think so, now.

"Q. You don't think so now?

"A. No.

"Q. You have changed your mind since April 29th, 1914.

"A. Yes, sir.

"Q. What made you change your mind?

"A. The assessment of 1914. \* \* \*

"Q. How did the assessment of 1914 make you change your mind as to something that had already passed?

"A. It had not passed. I had no knowledge of what the assessment of 1914 was on the 28th of April.

"Q. You mean they changed the method of assessment, or rather, the basis of assessment in 1914?

"A. I did not change it. The assessor changed it, and I had no knowledge of it at the time.

"Q. But you did believe at that time and still believe at this time that up to the assessment of 1914 the assessor had been influenced by this public opinion that is referred to here?

"A. Well, possibly, to a certain extent.

"Q. And as you state in the letter?

"A. Yes, sir.

"Q. Now, then, you say: "As a matter of fact, nearly all the lots in Port Angeles are now upon the rolls at from ten to twenty per cent of their true value.' Is that true or false?

"A. It is false.

"Q. Was it true at the time you uttered it, or was it false?

"A. It was false.

"Q. Did you know that it was true at the time you uttered it on the 29th of April, 1914, or did you know that it was false?

"A. I did not believe that that was true.

"Q. Then you knew it was false?

"A. Yes, sir.

"Q. And you further say 'And consequently the tax levy is very high, nearly to the limit in every taxing district.' Was that true or was it false?

"A. In the County?

"Q. No, you say in Port Angeles?

"A. That was true. \* \* \*

"Q. You believed that the assessments then, were below their true value?

"A. Yes sir.

"Q. In 1913?

"A. Yes, sir.

"Q. And that if they were raised to anywhere near their true value that the people would be appalled at the levy?

"A. If the levy was kept the same. \* \* \*

"Q. And you have said that the assessments were not as low as from ten to twenty per cent of the true valuation of property in Port Angeles?

"A. Yes, sir, I believe so.

"Q. Now, if they were not as low as ten to twenty per cent., what were they?

"A. I think they were somewhere in the neighborhood of fifty per cent of their value. \* \* \* from forty to fifty.

"When did you discover that?

"A. I felt that all the time. I think I did not tell the truth when I said it was ten to twenty. I was writing that letter for a purpose.

"Q. In other words, knowing at the time in your conscience that the assessed valuation was fifty per cent. of what you believed to be the true valuation, you falsely stated that it was but ten or twenty per cent of it?

"A. I so stated in that letter. \* \* \*



"Q. Was it true or was it false?

"A. It was not true."

Grasty testifies that he had a conversation with Lotzgesell, a member of the Board of Equalization and County Commissioner from the Eastern part of the county, as follows:—

"A. I had a talk with Mr. Lotsgezell regarding the values of property in Clallam County, and in Port Angeles, and he informed me that taxes were higher outside of Port Angeles than in other places in Clallam County; that the taxing business was in the hands of Port Angeles politicians. He stated to me that they were assessing the timber people rather stiff rates of interest, and that they had been protesting, and he expected some trouble from that source. I asked him if he would mind giving me a letter covering this difference, from his view point between assessed and the real value of property, and he promised me that he would, and that he would bring it into Dungeness the next morning. This was on Saturday night. At ten o'clock in the morning Mr. Lotsgezell had not put in his appearance, and I telephoned his home, and he replied over the 'phone by saying, 'Mr. Grasty, I have decided that I cannot give you that letter that I promised you'; and I asked him why, and he stated 'That he was afraid of getting himself in trouble; that there were certain things going on that he could not talk about, and that somebody was likely to be gotten across a barrel', and he would explain to me what he meant when he saw me in person, and he could not talk to me over the 'phone.

"Q. Did he ever make any further explanation of it?

"A. He never did; because I have never seen him from that time to this.

"Q. Did you discuss with him in regard to the discrepancy of the valuation and the assessment of any particular property?

"A. Not any special property. I did take up with him the matter of the Elks Building, because he, being an Elk was naturally interested in that, and I pointed



out to him that in the matter of raising the money on a bond issue that the value of the property would have to be appraised, and the people who might investigate those questions discovering such a discrepancy, if the matter could not be properly explained by the proper people, it was foolish to try to obtain a loan. And he simply said: "Well, the matter is as I have stated, and that is that the assessments of taxes are in the hands of a bunch of politicians in Port Angeles.

"Q. Did he say whether they were assessing property high or low?

"A. He said they were assessing property lower in Port Angeles than any place in the county, and that taxes were too high every where else in the county, both in the farm and the timber districts."

Concerning these conversations, Mr. Lotsgezell testified:—

"A. That statement of Mr. Grasty is absolutely false.

"Q. Just what did happen between you and Mr. Grasty?

"A. Mr. Grasty called me up from Dungeness over the 'phone and told me that he wished to see me on some very important business, that he could not talk over the 'phone, and wanted to know how he could meet me. I told him that I would come in that evening and see him.

"Q. Is this the first time that you came in contact with Mr. Grasty?

"A. Yes, sir, that is the only time I ever met Mr. Grasty.

"Q. Did you meet him personally at the time he called you up?

"A. Yes sir, I went out and met him at the hotel.

"Q. He called you up first, did he?

A. Yes sir.

"Q. All right, go ahead.

"A. I went to Dungeness and he was waiting for me, and he introduced himself, took me up to his room in the hotel and he told me that I owned a couple of lots at the head of the bay in Port Angeles, close

to the Earle's mill, and he would like to buy them of me. I told him that he was mistaken, that the lots belonged to my brother, that I owned no lots there. I said 'You can call him up over the phone, if you want to.' He said very confidentially that he was looking up a big mill site for Merrill-Ring Lumber Company, and he didn't want anybody to know anything about it, and for that reason he did not want to call him over the phone. He told me also he was negotiating with the Elks to make them a loan and showed me a statement that he had from Mr. Lutz and Mr. Christensen in regard to the value of property, and asked me what I thought about it. I kind of laughed and told him I thought they were pretty high on Port Angeles property. He asked if I did not think Mr. Lutz and Mr. Christensen were very conservative business men. I told him I thought they were, but they and I did not agree on the prices of Port Angeles property. He said he did not know how he would make a loan unless there was some showing made to his firm that the property was assessed so low. He asked me if I could not give him a letter of that kind. I told him I did not see how I could; I did not think that the property in Port Angeles was worth any more than it was assessed at; that I did not feel like I would take the whole town for the assessed value.

"Q. What is the last?

"A. I told him I did not think I would take the whole town at its assessed value. He asked me if the fact of this large mill coming there, if I did not think I could find some way by which I would give him such a letter and I told him if I did I would have to do it against my own judgment. He made lots of suggestions of development that he knew was going to be there. He urged me very strongly to try and help the Elks out. I told him if I could think of any means by which I would give the letter I would call him up on the phone or see him before the boat left. About ten o'clock the next morning I called him up and told him I did not see how I could give him that letter. He said he was very sorry; that it would help him in his

business down there. That is the last I ever saw of Mr. Grasty or heard of him, until I saw him in the court room."

A great many witnesses have testified as to their long residence in the county; that they never heard of any plan or agreement being made to give high values in the timber assessments and that they never had heard of such procedure being advocated either generally or in the political campaigns carried on in the county. No evidence has been introduced to contradict this. There has been no testimony that the plaintiffs, or other non-operating timber owners, had ever been threatened by any county officials with a raise in their timber assessments unless they would operate.

Mr. Hallahan, the assessor, when called upon to explain the raise in the timber assessments in the year 1914 over prior assessments—while there had been no increase in actual market values, testified in substance that he became convinced that the prior assessment was too low; that while the cruise of plaintiffs' lands might have been completed prior to the former assessment, yet a total cruise had not been completed of the timber land of the county when the prior assessment was made, but had been completed before the assessment of 1914, the inference being that, in order to treat the timber owners alike, an advance in values was deferred until the completion of the cruise. He further testified that the building of the Milwaukee railroad out from Port Angeles in the direction of plaintiffs' lands had increased their value.

While this extension is of no immediate use in logging these lands, yet the promise it holds out for the future probably affected the market value. At any rate, the assessor's action in giving consideration to that fact would be neither arbitrary nor fraudulent. The assessor's failure to take into account all of the conditions that might affect the question of value, or in giving greater consideration, relatively, to certain of such conditions than he should, is neither arbitrary nor fraudulent, but, at most, an error. An error,

alone, as is well known, does not invalidate an assessment.

A practice was shown, in assessing the county lands, to fix the values biennially, these figures having been fixed as of March 1, 1912, for the years 1912 and 1913.

The boom in property values in that county came on in the latter part of 1912. Prior to the law of 1913, providing for assessment at 50% of the true and fair values (Laws of 1913, chap. 140, page 438), in practice, values had been fixed, not at the full value of the property, but at some lesser ratio.

The assessments are not made public until about the time of the meeting of the Board of Equalization, in August of the even numbered years.

Mr. Grasty's conversation with the officials of the defendant county were all had before the assessment of 1914 was made public. This assessment made a substantial advance over that of 1912 and 1913, in some instances in Port Angeles property the advance being as great as 73%. A general advance on all land assessments is shown, in spite of the fact that the plaintiffs allege:

"the said assessing officers of Clallam County have wrongfully, unlawfully and corruptly combined and concerted together with the intent and purpose to increase the assessments upon the timber lands in the west end of the county beyond their proportion of the true and fair value of the property within the county and to lower and depreciate the assessments upon the property of the City of Port Angeles, and contiguous thereto, or in that vicinity, the farming lands in the east end of the county and other properties within the county, and especially in the middle and east district thereof and to assess the same upon a basis and at valuations far below their proportion of the true and fair value of the property subject to assessment in Clallam County."

The testimony of Grasty as to these conversations and of those contradicting him may, in part, be reconciled by the assumption that Grasty believed that the

law required assessments to be made on the full, actual value, while those to whom he talked knew that the assessment was at a lesser ratio and that Mr. Grasty thought that the assessment with which he was more or less familiar was that of 1914, whereas it was the assessment of 1912.

The fact that Lotsgezell, one of the members of the Board of Equalization, testified that, as to real estate values and that of bank stock and merchandise, he deferred to the assessor's judgment, while he followed his own judgment as to the value of live stock, because he was acquainted with its value, would deprive the plaintiffs of no right, or show an arbitrary action, or want of consideration by the Board of Equalization of their protests.

The action of such a body as a Board of Equalization is to be considered much as the action of a jury, the value of its determination, largely, depending upon the members conceding the advantage given the individual member by his knowledge and experience acquired in his particular vocation, the policy which forbids allowing the member of such a body, in his personal affairs, to impeach, by ex parte admissions, the collective action of such a body, should equally obtain.

*Chicago, B. & Q. R. Co. v. Babcock*, 204 U. S. 585 at 593.

Other large timber owners in Clallam County, similarly situated to plaintiffs, have paid their taxes for 1913 and 1914, the acreage held by them amounting to 2,248,044, while their taxes aggregated \$63,569.39 for 1913, and \$32,741.60 for 1914.

In *National Lumber & Manufacturing Co. v. Chehalis County* (44 Wash. Dec. 347 at 351), it is said:

"Some 46 mills were assessed for the year 1913 in the same manner. Of these nine or ten have contested the assessment. While the fact that the other thirty-six have not complained of their assessment is not evidence that the depreciated value of the appellant's plant is its market value, it yet may be referred to as showing that the standard used was not generally, by mill owners, regarded as incorrect or unjust."



While it has been shown that the assessment on fir, spruce and cedar varied from one dollar, in the zone of highest values, to fifty cents in the zone of lowest value, no such percentage of difference is shown in the assessment of hemlock in these zones, the highest being forty cents and the lowest twenty-five cents. It is the testimony of many witnesses that hemlock had substantially no value in the market. Witnesses testified that its chief value would be upon the land, in the construction of rail and logging roads. This fact, probably, accounts for, and might justify the difference in the allowance made in the several zones as to hemlock.

On the motion to dismiss, this court held:

"By the allegations of the bill of complaint, actual fraud is charged between the assessing officers. The facts recited in the complaint are not mistakes of fact or errors of judgment on the part of the assessing and equalizing officers, but actual fraud is charged, and confederation and co-operation with relation to the excessive valuation and assessment of the lands of the complainant. By reason of the allegations and charges made in the bill of complaint, I think justice demands that the bill be answered, and whether relief should be afforded to the complainants will depend upon the evidence which is presented in support of the charges and complaints made."

Notwithstanding this ruling, a large amount of testimony, both opinion evidence as to values and evidence of individual property sales has been introduced.

The material development of Clallam County had been at a standstill for a number of years when, in the latter part of 1912 and early part of 1913, it experienced a boom, owing to the announcement that the Milwaukee was to build the first railroad in the county and the commencement of the development of a large electrical power project, together with the announcement of the early construction of one of the largest lumber mills in the world. It is shown that skilled speculators further cultivated the excitement naturally incident to such a state of affairs.



## No. 36

When those conditions are considered, together with the necessarily opinion nature of the question of value at all times of all things, it is not surprising to find that the witnesses for plaintiffs and defendants were wide apart in their estimates of value. Under such circumstances, a wide range in honest opinions as to value is to be expected, but it is not the province of the court to further complicate matters by an announcement of an exact, judicial opinion as to these values.

- Cummings v. Nat'l Bank*, 101 U. S. 153, 25 L. Ed., 903;  
*Albuquerque Nat'l Bank v. Peres*, 147 U. S. 87;  
*Coulter v. L. & N. R. Co.*, 196 U. S. 605;  
*C. B. & Q. R. Co. v. Babcock*, 204 U. S. 585;  
*San Diego Land & Town Co. v. National City*, 174 U. S. 739;  
*State Railroad Tax Cases*, 92 U. S. 575, 575;  
*Exchange Nat'l Bank v. Miller*, 19 Fed. 372;  
*Templeton v. Pierce County*, 25 Wash. 377;  
*Edison Elec. Ill. Co. v. Spokane Co.*, 22 Wash. 168;  
*Carlisle v. Chehalis County*, 32 Wash. 284;  
*N. P. R. Co. v. Pierce County*, 55 Wash. 108;  
*Henderson v. Pierce Co.*, 37 Wash. 201;  
*Simpson Log. Co. v. Chehalis County*, 80 Wash. 245;  
*N. P. R. Co. v. State*, 42 Wash., Dec. 271;  
*Wells Fargo & Co.'s Ex. v. Crawford Co.*, 42 S. W. 710;  
*Sanitary Dist. of Chicago v. Gifford*, 100 N. E. 953;  
*Burton Stock Car Co. v. Traeger*, 58 N. E. 418;  
*People ex rel. Thompson v. Bourne*, 89 N. E. 690 at 691;  
*Hillman's, etc., v. County of Snohomish*, 45 Wash. Dec. 28 (page 30);  
*Andrews v. King County*, 1 Wash. 46;  
*Olympia Water Works v. Thurston County*, 14 Wash. 268;

*Olympia Water Works v. Gelbach*, 16 Wash. 482;

*Noyes v. King County*, 18 Wash. 417;

*Vancouver Water Works Co. v. Clarke County*, 55 Wash. 112;

*Olympia v. Stevens*, 15 Wash. 601;

*Hammond Lbr. Co. v. Cowlitz Co.*, 42 Wash. Dec. 237;

*Doty Lbr. & Shingle Co. v. Lewis Co.*, 60 Wash. 428, at 431.

The question for the court to determine is whether the plaintiffs have maintained the burden of establishing, by clear and convincing evidence, that there was no exercise of an honest judgment by the assessor, but that he, as a part of the conspiracy with the Board of Equalization, fraudulently overassessed plaintiff's timber lands.

*C. B. & Q. R. Co. v. Babcock*, 204 U. S. 585;

*San Diego &c., Co. v. Nat'l City*, 174 U. S. 759;

*Doty Lbr. & Shingle Co. v. Lewis Co.*, 60 Wash. 428;

*Carlisle v. Chehalis County*, 32 Wash. 284;

*Nat'l Lbr. & Mfg. Co. v. Chehalis Co.*, 44 Wash. Dec. 347;

*Chicago v. Gifford*, 44 Wash. Dec. 347.

Tenders were made by the plaintiffs of that portion of the taxes for the year 1913 admitted to be just and due, amounting to \$39,250, and further, for the taxes of 1914, amounting to \$32,371. It has not been shown in what manner the justness of the amount of these tenders was reached.

Testimony has been given concerning the values of plaintiffs' timber and that in the center of those districts called "Straits" zones. Also, farming lands in the Dungeness and Sequim bottoms and lots in Port Angeles and Sequim and certain milling property, but there has been nothing like evidence concerning the value of the property in the entire county, attempted. Nor is it conceded, or proven, that the properties concerning which there has been testimony as to value are

fair samples of the property of the county in this particular.

Under these circumstances, if it were conceded that the assessment was wrong and the court were to undertake to determine from this evidence what valuation to put on plaintiffs' lands, so that it would bear the same proportion to the total of the assessed valuation of the other county property, or other county property, generally, or other timber lands generally, as their actual value bears to the actual value of such property in the county, it would be impossible.

It has been shown that, within the corporate limits of the Town of Port Angeles, there are two acres for every man, woman and child there residing.

Various elements are to be taken into consideration in forming an opinion as to the value of a thing. One of these is the selling price of other similar things near the time in question; but it is perfectly clear that, as an evidence of value, such selling price is of much less worth in one case than another.

Take, for example, wheat: Almost the entire crop for one year is sold before the next year's crop is ready. It is a staple. There is a constant demand for it. In each case, it is not necessary to look beyond current sales to form an opinion of its value.

On the other hand, take a new, over-boomed town with not one out of one hundred of its lots used or improved; how misleading it would be to depend on one sale, or several sales, to determine the value of unimproved lots! It would be an easy rule, but not a safe one.

In the case of Port Angeles, where hundreds of vacant lots have been held for years, at considerable expense to the holders, the fact that the holders of such property become very hopeful with the advent of a railroad and other large enterprises and that a few sales were made at substantial prices—a dozen or two such sales, in the business section, exhausting the market—there would be no warrant for taking such selling price as determining the true measure of value of the unsold lots. The taxes are assessed, levied and

paid each year. Such sales may be made once in twenty years. If such rule was followed, then, in lean years, no property being sold, the lots would have no value. A rule that leads to such a conclusion is wrong.

"It is obvious that the accidental sales in a given year may be a misleading guide to average values, apart from the testimony that some, at least, of the conveyances did not report true prices, yet they furnish the chief weapon of attack." (*Coulter v. L. & N. R. Co.*, 196 U. S., 605 at 610.)

In considering the various elements by which to measure the value of the bulk of the property, the few boom prices existing in 1912 should be spread over a number of years to avoid injustice. Timber lands, in their nature, are much more stable in value. Both Mr. Hallahan, in the statements attributed to him by Grasty:

"We grade the property in the county and assess it accordingly."

"We assess timber in the county more than we do anything else."

and Mr. Hansen in his letter above set out would appear to have had, in so stating and writing, something of this kind in their minds.

Of course, if the assessor, for the sole purpose of making these plaintiffs operate their timber property and become lumber producers, over-assessed them, his action would be fraudulent; but, if he increased their assessments, only to the extent he considered equal in proportion to the assessment on other property, it matters not that he believed that such higher assessment would make them operate, and that he thought it a good thing that they should. This action would not be fraudulent. The purpose with which an act is done and the effect are two different things. One of the effects of a tariff for revenue only is incidental protection, but it is not the purpose of the makers of the tariff.

The statements attributed to the assessor may, if taken at their face, tend to show that he lacked pure singleness of purpose, but when viewed in the light

of the inducement held out to him, it is not unreasonable to conclude that he brought forward the effect he thought would be accomplished by the increased assessment and magnified it into his purpose in order to make his point with Grasty and convince him of the great value of the other Port Angeles property. Recollections of conversations had long past are dangerous guides.

If the construction of the quoted letters and alleged conversations contended for by plaintiffs was conceded, it would be far from clear that the county officers attacked by them spoke truthfully. The plaintiffs presuppose the dishonesty of these officials and contend that, in order to build up the Town of Port Angeles, the western part of the county was dishonestly and fraudulently discriminated against in the matter of the assessment.

As the inducement held out in his talks with these officers by Mr. Grasty was exactly towards the same end—that is, the improvement of Port Angeles by the loaning of money on the property therein—if it be presupposed that these men would act fraudulently in the one instance, it would not be unreasonable to suppose that they would do likewise in the other.

In their relations with Mr. Grasty, the contingency of gain by reason of the statements to him was imminent, and the restraint concerning misrepresentations as to what they had theretofore done as officers was remote. The burden upon the plaintiffs is to show that these officials acted fraudulently in the particular matter of these assessments, and not that they may not have been honest men at all times.

Their action in making these assessments was under sanction of an oath, while their conversations with Mr. Grasty were more in the nature of traders' talk.

*Olympia v. Stevens*, 15 Wash. 601.

It may be conceded that, in certain isolated cases, as with the property of Earle's mill, the Olympic Power Company, the banks in Port Angeles and shingle mills, the assessments did not bear as great a percentage to their actual value as is the case of plaintiffs' lands, yet



the court would still be left without a measure, or standard by which to safely scale down the assessments on plaintiffs' property.

Concerning such isolated cases of under assessment, the only remedy would appear to be the opportunity afforded other tax payers of appearing before the Board of Equalization and obtaining an increase in the assessments of such favored ones. In so concluding, I have not overlooked the fact that the assessor has testified that any mistake made in the assessment concerning the banks was owing to a misinterpretation of the law regulating the assessment of banks; that the shingle mills referred to were in sections where the shingle timber had been cut out and the mills would have to be moved to other localities to be of any use, and that, in so moving them, their value would be largely lost; that the Earle's mill was not completed at the time of making the assessment and that the Olympic Power Company's plant was assessed low on account of its having been damaged—the extent of which was unknown at the time of the assessment—by an accident in connection with its dam.

Such explanations are so far reasonable as to deprive these instances of under assessments of any particular probative value in sustaining the charge of fraud.

The bills of complaint will be dismissed at plaintiffs' costs.

Indorsed: Decision on the Merits. Filed January 22, 1916.

No. 36

### DECREE

The above entitled cause having come on duly and regularly for trial before the undersigned Judge of the United States District Court, the plaintiff appearing by its attorneys, F. W. Keeney, Esquire, and Messrs. Earle & Steinert and Messrs. Peters & Powell, and the defendants appearing by Sandford C. Rose, Esquire, Prosecuting Attorney for Clallam County, and by their attorneys, Messrs. J. E. Frost, Edwin C. Ewing and C. F. Riddell, and their being at issue and ready



for trial three other causes now on file in this Court, involving substantially the same issues and requiring substantially the same testimony, and counsel for all parties hereto, with the consent of the Court, having stipulated that all the testimony introduced in so far as applicable should be considered upon the one trial as having been introduced in each of said causes, the said causes being this cause and cause number 56 in this Court, between the same parties, and causes numbered 37 and 57 in this Court in which Charles H. Ruddock and Timothy H. McCarthy are plaintiffs and Clallam County and its Treasurer, in his official capacity as such officer, are defendants; and all parties having introduced testimony and rested, and respective counsel having orally argued this cause to the Court, and having submitted their briefs to the Court, the Court having considered the same; and it appearing to the Court that by written stipulation between the parties filed in this Court on the 6th day of November, 1914, and order then entered, there was on said 6th day of November, 1914, paid by the clerk of this Court to the defendant Clallam County the sum of \$29,400.00, the same being the proceeds of the tender theretofore paid into this Court by this plaintiff, and the Court, after full consideration of all the facts and the law, being now duly and fully advised in the premises,

It is hereby ORDERED, ADJUDGED and DECREED that the above entitled cause be and the same hereby is dismissed with prejudice, and that plaintiff take nothing by this cause.

It is further ORDERED, ADJUDGED and DECREED that all the taxes levied for the year 1913 upon the real property described in the complaint herein are in all things legal and valid and (except for the payment hereinafter in this decree mentioned) are due and owing to Clallam County, a municipal corporation of the State of Washington.

It is further ORDERED, ADJUDGED and DECREED that the payment of said sum of \$29,400.00 do operate as a payment pro tanto of the taxes for the year 1913 due upon the real property described in the

complaint herein, and that the tax for said year 1913 so due upon each description of property appearing upon the tax rolls and set forth in said complaint be determined by the County Treasurer of said Clallam County in the following manner, to-wit: That said Treasurer determine the total amount of tax due for the year 1913 upon all of said real property described in the complaint herein; that he credit on the said taxes due upon each such description on the tax rolls a sum which bears the same ratio to the total amount due on such description of real property as \$29,400.00 bears to the total amount of tax due upon all of said property for the year 1913; that the amount left after making said deduction be considered and hereby is decreed to be the principal amount of such taxes still due upon such description; that the said Treasurer figure interest according to law relating to delinquent taxes, upon the total amount due on each said description on the tax rolls up to the 6th day of November, 1914, and that he figure interest, according to law relating to delinquent taxes, upon the balance due after allowing the credit aforesaid from the 6th day of November, 1914, until paid; and the said balance due, together with the interest figured as aforesaid, and all other lawful costs and charges accruing, shall be the amount necessary to be paid to redeem the said property from the lien of the said taxes.

It is further hereby ORDERED, ADJUDGED and DECREED that the above named defendant Clallam County, a municipal corporation of the State of Washington, do have and recover of and against the above named plaintiff Clallam Lumber Company, a corporation, a judgment for its taxable costs and disbursements herein, which are hereby taxed in the sum of seven hundred sixty dollars and five cents (\$760.05), for which said sum let execution issue.

To the dismissal of this cause, and to each separate paragraph of this decree and to the signing and entry of this decree, the above named plaintiff excepts and its exception is hereby allowed by the Court.

Done in open Court this 3d day of February, 1916.  
EDWARD E. CUSHMAN,  
District Judge.  
Indorsed: Decree. Filed February 3, 1916.

IN EQUITY  
No. 36  
ORDER ON EXCEPTIONS TO SECOND  
AMENDED ANSWER OF THE DE-  
FENDANTS

The defendants upon the conclusion of the evidence in this cause on the 10th day of December, 1915, obtained permission from the court to amend their answer herein so as to conform to the proofs, which permission was then granted over the objection of the complainant, to which the plaintiff excepted and said exception was then allowed.

The application of the defendants now made to file herein a formal second amended answer embodying these proposed amendments, is now allowed over the objection of the complainant to which exception is reserved by the complainant and said exception is here and now allowed.

Referring to paragraph XIII of said amended pleading complainant excepts to the amendment which now reads:

"Defendants admit the practice by assessors and taxing boards of the custom herein referred to and admit the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization,"  
whereas in their former answer they had specifically denied these matters.

And referring to line 18 of said paragraph XIII the defendants now omit the following allegation which appeared in the former answer:

"Or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the year 1912 and 1913 were made."

And referring to line 23 of said paragraph XIII,

the defendants "deny that the interior timber lands in said county were valued in the year 1913 for the purpose of taxation, at sums in excess of 53 per cent of the true and fair value thereof in money," whereas they previously admitted such matter. And immediately prior to such admission was the following allegation:

"Or upon any other or different basis than that provided by the laws of the state of Washington at the time the assessments for the years 1912 and 1913 were made,"

which last allegation is now omitted from this answer.

## II

Referring to paragraph XIV, of said amended pleading complainant excepts to the amendment which now reads:

"They deny that said assessment for the year 1913 was made upon the basis of  $83\frac{1}{2}$  per cent,"

omitting from this amendment, what they had formerly pleaded as follows:

"Or upon any other or different basis than the true and fair value in money of the property assessed."

## III

Referring to paragraph XVI, of said amended pleading, complainant excepts to the amendment which now reads, at line 9, on page 9;

"Deny that it has been the custom of the assessor of said county to consult and advise with other members of the County Board of Equalization of said county," etc.

whereas in their former pleading, they admitted such allegation.

## IV

Referring to paragraph XXI of said amended answer, at page 12, line 17 thereof, the defendants now allege:

"But deny that the same can readily be logged to the Straits as stated,"

whereas in their former pleading they admitted this allegation.

Complainant's objection is based upon the ground

that such amendments are not consistent with the proofs, and are wholly inconsistent with the pleading upon which the case was tried, and with the position taken by the defendants throughout the trial.

Complainant's exceptions to each of the amendments to the answer in each of the above particulars are hereby allowed. Such exceptions to be entered as of date February 3, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Order on Exceptions to Second Amended Answer of Defendants. Filed February 24, 1916.

No. 36

PETITION TO REHEAR AND TO MODIFY  
JUDGMENT

Come now the plaintiff, Clallam Lumber Company, and respectfully prays this court to grant a rehearing herein, in this:

I

The court erred in sustaining the assessment by Clallam County of the hemlock timber and hemlock ties of the plaintiffs in any sum whatsoever, for the reason that it appeared from the evidence in the entire record that this timber and these ties were of no appreciable market value at the dates of the assessment, nor at any time covered by the facts of this case. The court therefore should have struck such assessment of the plaintiff out, whether the plaintiff had made a case of fraud upon the entire issue or not, since a court of equity having acquired jurisdiction, on the grounds of fraud, would retain it to do equity to the plaintiff, even if the plaintiff failed in sustaining charges of fraud.

*Simkins A Federal Equity Suit*, p. 27.

*Gristwold vs. Hilton*, 87 Fed. 257.

*Waite vs. O'Neill*, 34 L. R. A. 550, 76 Fed. 408.

*Shainwald vs. Lewis*, 69 Fed. 492.

II

The plaintiff respectfully prays the court to modify the judgment and decree by charging the plaintiff or

the plaintiff's lands with interest at six per cent per annum from the date of delinquency of taxes, instead of the statutory rate, in view of the plaintiff's good faith in bringing this suit and in the prosecution of the same, and on the ground of its being an unnecessary hardship to penalize the plaintiff with so high a rate of interest under the circumstances.

Respectfully submitted,

PETERS & POWELL,  
EARLE & STEINERT,  
Attorneys for Plaintiff.

United States of America,  
State of Washington, ss.  
County of King.

Dan Earle being first duly sworn, on oath says: That he is one of the attorneys for the plaintiff in the above entitled cause and makes this verification on its behalf for the reason that said plaintiff has no officer or agent residing in the Western District of Washington; that he has read the foregoing Petition for Rehearing and to Modify Judgment, knows the contents thereof and believes the same to be true.

DAN EARLE.

Subscribed and sworn to before me this 3rd day of March, 1916.

(Seal)

ROBERT W. REID,

Notary Public in and for the State of Washington, residing at Seattle.

Indorsed: Petition to Rehear and to Modify Judgment. Filed March 3, 1916.

Nos. 36, 37, 56, 57

### HEARING—JOURNAL ENTRY

Now on this day this cause comes on for hearing on motion for rehearing or review, the Plaintiff being represented by Peters & Powell and D. Earle, and the Defendants represented by C. F. Riddell, and the Court after hearing argument of respective counsel takes the said matter under advisement.

Dated April 18, 1916.

Equity Journal 1—Page 125.



Nos. 36-37, 56 & 57  
MEMORANDUM DECISION ON PETITION FOR  
A RE-HEARING  
FILED MAY 11, 1916.

Peters & Powell,  
Earle & Steinert,  
Jones & Riddell,  
J. E. Frost,  
E. C. Ewing,  
CUSHMAN, District Judge.

For Plaintiffs.  
For Defendants.

Insofar as the petition for a re-hearing is aimed at the assessment as affected by the hemlock valuation, all that can be said is that certain phases of the evidence—particularly that of some of defendants' witnesses—are more favorable to plaintiffs as to the overvaluation of the hemlock than that covering the valuation of the fir, spruce and cedar; but, after all is said, it is only a question of overvaluation and, in any event, it is not so palpably excessive as to warrant a finding of fraud.

The cases relied upon by the plaintiffs are not cases of overvaluation, but uniformly involve some other controlling element as: fraud; the adoption of a fundamentally wrong principle; an erroneous system; mistake of law or such palpably excessive overvaluation as to impute fraud.

As to the question of interest on the unpaid and untendered taxes, the laws of Washington provide:

"Hereafter no action or proceeding shall be commenced or instituted in any court of this state to enjoin \* \* \* the collection of any taxes \* \* \*, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest, and costs justly due and unpaid from such person or corporation on the property \* \* \*".  
(Sec. 955 Rem. & Bal. Code.)

"The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of the county, whether levied for state, county, school,

bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon real property made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the thirty-first day of May in each year, after which date they shall become delinquent, and interest at the rate of fifteen per cent per annum shall be charged upon such unpaid taxes from the date of delinquency until paid." (Sec. 9219 Rem. & Bal. Code.)

It may be conceded that this suit was brought in entire good faith; that plaintiffs' only remedy was in equity and not at law and that the fifteen per cent. interest charged upon the taxes is a penalty, yet I find no warrant therein given the court to set aside a statute passed to safeguard the sources of the state's revenues.

Re-hearing denied.

Indorsed: Memorandum Decision on Petition for a Rehearing. Filed May 11, 1916.

No. 36

### ORDER DENYING PETITION FOR REHEARING

A petition for rehearing having been filed by the plaintiff in the above entitled cause, briefs having been submitted thereon, and the court having considered the same; and the court having on the 11th day of May, 1916, filed its memorandum decision herein on said petition for rehearing;

Now, therefore, it is hereby ordered that said petition for rehearing be and the same hereby is denied. To the denial of said petition and to the entry of this order plaintiff excepts and exception is hereby allowed.

Done in open Court this 15th day of May, 1916.

EDWARD E. CUSHMAN,

United States District Judge.

Indorsed: Order Denying Petition for Rehearing. Filed May 15, 1916.

Tuesday, May 2, 1916.

Court met pursuant to adjournment. Present: Hon. Jeremiah Neterer, Judge; F. L. Crosby, Clerk; Albert Moody, Assistant U. S. Attorney; Crier Kelly, Bailiff; Yeatowan Eaton; W. E. Theodore, Deputy U. S. Marshall.

Whereupon court stands adjourned sine die.

JEREMIAH NETERER, District Judge.

No. 36

NOTICE OF LODGMENT OF STATEMENT

To Clallam County and Clifford L. Babcock, Treasurer, Defendants, and to Messrs. J. E. Cochran, J. E. Frost, C. F. Riddell and Edwin C. Ewing and Sandford C. Rose, their attorneys.

You and each of you are hereby notified that the above named plaintiff has prepared and has this day lodged in the office of the Clerk of the above entitled court at Seattle, Washington, for your examination, a statement of all the testimony introduced upon the trial of the above entitled cause essential to the decision of the questions presented by the appeal of said cause to the United States Circuit Court of Appeals for the Ninth Circuit, together with all objections and exceptions made and taken to the admission and exclusion of evidence, and all motions and rulings thereon made upon said trial:

And you are hereby further notified that the above named plaintiff will upon the 18 day of September, 1916, at the hour of ten o'clock A. M., of said day, at the court room of the above entitled court, in the United States Court House in the City of Seattle, State of Washington, present said statement to the above entitled court and to the Honorable Edward E. Cushman, the Judge who presided at the trial of said cause, and the Presiding Judge thereof, or to the Honorable Jeremiah Neterer, in the event the said E. E. Cushman is disabled from attending or presiding in said matter, and ask said court and judge to approve the same.

EARL & STEINERT,  
PETERS & POWELL,

Attorneys for Plaintiff.

Copy of the foregoing NOTICE OF LODGMENT OF STATEMENT received in Seattle, Washington, this 1st day of September, 1916.

SANDFORD C. ROSE,  
JONES & RIDDELL,

Attorneys for Defendants.

Indorsed: Notice of Lodgment of Statement.  
Filed September 1, 1916.

No. 36

ORDER AS TO SETTLEMENT OF STATEMENT  
OF FACTS

This matter coming on now to be heard before the Hon. E. E. Cushman, Judge, upon the consideration and settlement of the statement of facts herein on appeal, proposed by the plaintiff, the plaintiff being present and represented by its counsel, Peters & Powell, and the defendants being present and represented by their counsel, C. F. Riddell, Esq., and it being now represented to the court by both parties that the statement as proposed by the plaintiff and lodged by it with the clerk of this court on the 1st day of September, 1916, and the amendments thereto and alterations thereof proposed by the defendants and lodged with the clerk of this court on the 20th day of October, 1916, as now checked and corrected by said parties, constitute a true and complete statement of all of the evidence and testimony introduced upon the trial of the above entitled cause, essential to a decision of the questions presented upon the appeal of said cause, together with all exceptions taken and objections made to the admission or exclusion of evidence, and all motions and rulings thereon made upon said trial, and that same contains all the evidence given or offered upon said trial and all the material matters occurring therein not already a part of the record herein; and it being stipulated by said parties in open court that said statement as so amended may be reduced to printed form and in such form may be approved, signed and certified by this court as a true, complete and properly

prepared statement on appeal and may thereupon be filed herein as of this date,

IT IS HERE AND NOW ORDERED that the foregoing disposition of the matter is hereby consented to and made by this court.

Done in open court this 27th day of October, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Order Settling Statement of Facts on Appeal. Filed October 27, 1916.

No. 36

### ASSIGNMENTS OF ERROR ON APPEAL

Now on this 27 day of October, 1916, comes the plaintiff, Clallam Lumber Company, by its solicitors, Earle & Steinert and Peters & Powell, and say that the Decree entered in the above entitled cause on the 3rd day of February, 1916, is erroneous and unjust to the plaintiff, for the following reasons:

I

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross examination of the witness, Thomas Aldwell, a witness for the plaintiffs on the value of the Olympic Power Company's plant:

"Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?"

To this plaintiff objected. The objection was overruled, and the witness answered (Plaintiffs reserving and being allowed an exception):

"I think around Port Angeles they were very optimistic."

"Q (By defendants' counsel) In other words the general impression was that your dam and power site was a failure up there?"

To this plaintiff objected as being incompetent, irrelevant and immaterial. The objection was overruled, an exception taken and allowed by the court.

To which question the witness answered substantially that the general impression was that the dam would not hold.

## II

Because the court overruled the objection of the plaintiff to the following question asked by the defendants' counsel on cross examination of the witness Aldwell, a witness for the plaintiff as to the value of town lots in Port Angeles in March of 1913 and 1914:

The witness was asked whether he was not willing to sell some fifty or sixty thousand dollars worth of Port Angeles property that he had, for double its assessed value, to which the plaintiff objected as incompetent. The objection was overruled and an exception allowed. The witness answered that he would sell the property at double its assessed value.

This holding of the court was error.

## III

Because the court erred in admitting the testimony of the defendants' witness, C. M. Lauridsen under the following circumstances:

The witness Lauridsen was called by the defendants as an expert upon the value of real estate in Port Angeles and was asked to point out upon a memorandum or tabulation of certain lots what ones he said he would sell on the first of March, 1914, for their assessed value. This was objected to by the plaintiff on the ground that it was incompetent, irrelevant and not evidence of the market value of the property. This objection was overruled by the court, an exception taken by plaintiff and allowed by the court.

The witness answered that the property described was upon the last two sheets of this memorandum or tabulation of lots, being Defendants' Exhibit 29.

## II

Because the court overruled the objection of the plaintiffs to the following question put by defendants' counsel to their own witness, C. M. Lauridsen, who was being examined as an expert upon the value of real property in the town of Port Angeles:

"Q That property, according to Mr. Ware's testimony was worth \$6000 on the first of March, 1914. Will you state what you paid for it?



A I paid \$2500 on the 13th of March of that same year."

To which ruling the plaintiff excepted and its exception was allowed by the court.

### III

Because the court overruled the objection of the plaintiff to the following question put by the defendants to their witness, C. M. Lauridsen:

"Q State the facts about the purchase of Lots 18 in Block 54 and Lots 7 and 14 in Block 172."

To which the witness answered:

"Lot 18 in Block 54 I bought in January for \$300." Lot 7 and lot 14 in Block 172, the witness says he purchased for \$175.

To which ruling the plaintiff excepted and its exception was allowed by the court.

### IV

Because the court erred in sustaining the objection of the defendants to the following question put by the plaintiffs to one of the defendants, Clifford L. Babcock:

"Q Again in section 18 of your answer you say 'Deny that the lands and other properties situated at Port Angeles and subject to taxation and valuation upon the assessment rolls as equalized for such years, were valued at not to exceed 10 to 20 per cent of their true and fair value in money.' Could you state then what you had in mind at that time as the rate at which they were assessed?"

To which ruling the plaintiff excepted and its exception was allowed by the court.

### V

Because the court, after the conclusion of all the evidence, permitted the defendants to amend their amended answer, in the following particulars, to wit:

(a) In paragraph XIII of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties and particularly Clallam County, of assessing property at from 35 to 50 per cent of its true value, and had de-

nied the recognition of such custom or practice by the State Board of Equalization.

In said second amended answer they "Admit the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by the county assessors and its recognition and acquiescence by the state Board of Equalizaion," meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent of its true value.

(b) In their former answer they had denied "that the Assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, *or upon any other or different basis than that provided by the laws of the state of Washington at the time the assessment for the years 1912 and 1913 were made.*"

In their second amended answer, they omit all of that portion above underscored.

(c) In their first amended answer, paragraph XIII, they plead as follows:

"Admit that the interior timber lands in said county including the lands owned by the plaintiff, were and are valued in the year 1913 for the purpose of taxation, at sums in excess of 53 per cent of the true and fair value thereof in money."

In their second amended answer, they deny this allegation.

To this amendment plaintiff objected at the time, but said objection was overruled and an exception allowed by the court.

## VI

Because the court allowed the defendants, over the objection of the plaintiff then made at the conclusion of the evidence, to amend their answer in the following particulars:

(a) In their first amended answer, the defendants had alleged in paragraph XIV thereof the following:

"Deny that said assessment for the year 1914 was made upon the basis of 83½ per cent *or upon any other*

*or different basis than the true and fair value in money of all property assessed."*

Whereas the second amended answer contains the same denial, omitting however, the words above underscored.

Plaintiff reserved an exception to this amendment at the time, which was allowed by the court.

(b) In their first amended answer, in paragraph XXI thereof, they had alleged: "That in the zones abutting upon the Straits of Fuca there lie fine bodies of fir, spruce, cedar and hemlock timber which can readily be logged to the Straits as stated," while in their second amended answer they *deny* that said timber can readily be logged to the Straits as stated.

To this amendment and to the allowance thereof the plaintiff at the time reserved an exception, which was allowed by the court.

#### VII

Because the court erred in decreeing that the taxes for the year 1913 upon the real property of the plaintiff described in the complaint, being to wit, in the sum of \$50,049.59 (or in any sum in excess of \$30,000.00) were legal and valid.

#### VIII

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against the plaintiffs for costs.

#### IX

Because the court erred in failing to adjudge and decree that the just and equitable amount to be taxed to the plaintiff's lands set forth in their bill, was not in excess of \$30,000, and that the plaintiff had tendered this amount, and that the County of Clallam and the Treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1913 and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

#### X

Because the court erred in its decree in failing to

find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiff, in the sum of \$50,049.59 were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and Board of Equalization of Clallam County.

#### XI

Because the court erred in refusing to re-adjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of \$30,000 tendered by the plaintiff, and to cancel from said lands the balance of said taxes.

#### XII

Because the court erred, under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles and in failing to cut down the amount of the tax levy, as provided in the decree by at least the sum of \$8,955.56.

#### XIII

Because the evidence showed that the allegations of the complaint were true and that the allegations of the second amended answer were not true.

#### XIV

Because the court erred in entering judgment that the plaintiff take nothing by this action and that the defendants go hence without day and recover their costs.

#### XV

Because the court erred in not entering judgment for the plaintiff and against the defendants in accordance with the prayer of the complain.

#### XVI

Because the evidence showed that the plaintiff's lands set out in the bill of complaint were assessed by Clallam County for the year 1913 taxes, in the sum of \$50,049.69, whereas a just and fair assessment of such lands did not exceed the sum of \$30,000.00, and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against

the plaintiffs and other timber lands, and in favor of other classes of property in the said Clallam County, and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

WHEREFORE plaintiffs pray that such judgment be reversed and that this Honorable Court will direct the entry of a judgment or decree in accordance with the prayer of plaintiff's complaint.

EARL & STEINERT,  
PETERS & POWELL,  
Attorneys for Plaintiffs.

Indorsed: Assignments of Error on Appeal. Filed  
October 27, 1916.

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT  
OF WASHINGTON, NORTHERN DI-  
VISION

CLALLAM LUMBER COMPANY, a corporation,  
Plaintiff,

vs.

CLALLAM COUNTY, a municipal corporation, and  
CLIFFORD L. BABCOCK, Treasurer,  
Defendants.

No. 36

### PETITION FOR APPEAL

Filed Oct. 27th, 1916, in the District Court of the  
United States for the Western District of Washington.  
TO THE HONORABLE EDWARD E. CUSHMAN,  
DISTRICT JUDGE:

The above named plaintiff, feeling itself aggrieved by the decree made and entered in this cause, on the 3rd day of February, 1916, and, after motion for rehearing, upon the 16th day of May, 1916, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Errors, which is filed herewith, and prays that its appeal be allowed and that citation issue as provided by law, and that a transcript of the was based, duly authenticated, may be sent to the

record, proceedings and papers upon which said decree United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, and your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal may be made.

EARLE & STEINERT,  
PETERS & POWELL,  
Solicitors.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Five hundred Dollars.

EDWARD E. CUSHMAN,  
Judge.

Dated at Seattle, Oct. 27, 1916.

Indorsed: Petition for Appeal. Filed October 27, 1916.

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT  
OF WASHINGTON, NORTHERN DI-  
VISION

CLALLAM LUMBER COMPANY, a corporation,  
Plaintiff,

vs.

CLALLAM COUNTY, a municipal corporation, and  
CLIFFORD L. BABCOCK, Treasurer,  
Defendants.

IN EQUITY—NO. 36  
BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That We, Clallam Lumber Company, as principal, and Massachusetts Bonding and Insurance Company as surety, acknowledge ourselves to be jointly indebted to the county of Clallam and Clifford L. Babcock, treasurer, appellees, in the above entitled cause, in the sum of Five hundred (\$500.00 Dollars, conditioned that,

Whereas, on the 3rd day of February, 1916, and after petition for re-hearing thereon, on the 16th day of May, 1916, in the District Court of the United States for the Western District of Washington, in a



suit depending in that court, wherein Clallam Lumber Company was plaintiff and Clallam county and Clifford L. Babcock were defendants, numbered on the Equity Docket as thirty-six, a decree was rendered against the said Clallam Lumber Company, and the said Clallam Lumber Company, having obtained an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, and filed a copy thereof in the office of the clerk of court, to reverse the said decree, and citation directed to the said county of Clallam, and to the said Clifford L. Babcock, treasurer, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, on the 26th day of November, 1916, next.

Now, if the said Clallam Lumber Company shall prosecute its appeal to effect and shall answer all costs, if it fails to make its appeal good, then the obligation to be void, else to remain in full force and virtue.

CLALLAM LUMBER COMPANY,

By W. A. Peters, its Attorney.

MASSACHUSETTS BONDING AND INSURANCE COMPANY.  
(Seal)

By Fred B. Potwin, Its Attorney in Fact.  
Surety.

Approved Oct. 27, 1916.

EDWARD E. CUSHMAN,

Judge.

Indorsed: Bond on Appeal. Filed October 27, 1916.

No. 36

#### ORDER AS TO EXHIBITS

It appearing, in the opinion of the judge presiding in the United States District Court for the Western District of Washington, Northern Division, necessary and proper that the original exhibits offered and received in evidence or filed in said cause on trial thereof, should be inspected in the above entitled court upon appeal.

IT IS ORDERED that said original exhibits be

retained for safe keeping by the clerk of said District Court, to be by him transmitted under his hand and seal of said District Court to the clerk of the above entitled court at San Francisco, California, as a supplemental record herein upon appeal.

Dated Seattle, Washington, October 27, 1916.

EDWARD E. CUSHMAN,

Judge of the United States District Court, Western District of Washington, sitting in the Northern Division.

Indorsed: Order as to Exhibits. Filed October 27, 1916.

No. 36

ORDER EXTENDING TIME TO DOCKET  
CAUSE ON APPEAL

Now on this 2d day of November, 1916, the above entitled cause came on to be heard upon the motion of Clallam Lumber Company, plaintiff and appellant, for an order extending the time in which to docket this case and to file the record thereof with the Clerk of the Circuit Court of Appeals for the Ninth Circuit, upon the ground that the same is necessary by reason of the great bulk of the record to be transcribed or printed herein, and the court upon hearing said motion and being fully advised in the premises, and considering that good cause has been shown for granting the same, and being the Judge who signed the Citation on appeal herein;

IT IS ORDERED That the time within which said appellant shall docket said cause on appeal and the return day named in the Citation issued by this Court, be enlarged to and including the 1st day of January, 1917.

EDWARD E. CUSHMAN, Judge.

Service of the foregoing Order and receipt of a copy thereof admitted this 2d day of November, 1916.

S. C. ROSE,

C. F. RIDDELL,

Attorneys for Defendants, Appellees.

Indorsed: Order Extending Time to Docket Cause on Appeal. Filed November 2, 1916.

## NO. 36

## STIPULATION AND ORDER AS TO RECORD

It is hereby stipulated by and between the parties plaintiff and defendant through their respective counsel, that in preparing the transcript and record on appeal all captions, except the name of the paper and number of the cause, except where specially noted in the Praeipie for record on appeal, and all verifications, all certificates of notaries public or other officers or officials to all depositions taken and also the stipulation with reference to taking the depositions, may be omitted, and that all indorsements except to show the name of the paper and date of filing, and all acceptances of service of papers, may be omitted.

PETERS & POWELL,  
Attorneys for Plaintiff.

S. C. ROSE,  
C. F. RIDDELL,  
Attorneys for Defendants.

On reading the foregoing Stipulation as to the record on appeal in this cause it is ordered that said record may be so prepared and filed.

Dated at Seattle, Washington, this 2d day of November, 1916.

EDWARD E. CUSHMAN,  
Judge of the above entitled Court.

Indorsed. Stipulation and Order as to Record.  
Filed November 2, 1916.

## No. 36

## PRAECIPE

## TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare a record on appeal in the above entitled cause, consisting of the following:

(1) Caption exhibiting the proper style of court and title of the case; names of the parties; the several dates when the respective pleadings were filed; the time when the trial was had; the name of the judge hearing same; dates of entry of the decree; of plaintiff's petition for rehearing; of argument on petition to rehear

and of the court's taking same under advisement; of the entry of final order denying petition to rehear; of filing petition for appeal; of allowance of petition by the court and the filing of assignment of errors.

(2) Plaintiff's complaint filed May 29, 1914.

(2) Defendants' motion to dismiss plaintiff's bill of complaint, filed June 18, 1914.

(3) Memo decision denying motion to dismiss, filed October 26, 1914.

(4) Order denying motion to dismiss filed Oct. 30, 1914.

(5) Stipulation of parties with reference to payment of tender and acceptance of same, filed Nov. 6, 1914.

(6) Order upon Clerk to pay amount tendered to County Treasurer filed Nov. 6, 1914.

(7) Receipt of County Treasurer filed Nov. 8, 1914.

(8) Stipulation of parties with reference to Complaint and Amended Complaint, Amended Answer and Second Amended Answer, filed November 6, 1916.

(9) Defendants' amended answer to amended complaint filed January 18, 1915.

(10) Statment of testimony as approved by the court and filed in said cause.

(11) The following depositions taken and filed in this cause on the 30th day of August, 1915, to-wit: Testimony of R. W. Schumacher and J. P. Christensen. Testimony of J. A. Adams.

The following portions of the testimony of William Garlick: Page 27, lines 6 to 22 inclusive; page 50, line 25 to line 2 on page 51; page 52, lines 3 to 18 inclusive; page 57, lines 21 to 30 inclusive; all cross examination, re-direct examination and re-cross examination of the witness Garlick.

Testimony of Charles F. Seal, page 66, lines 6 to 13 both inclusive.

(12) The following exhibits in the case:

Plaintiff's Exhibit P being a letter from Christensen to Grasty dated April 29, 1914.

Plaintiff's Exhibit L, being letter of J. C. Hansen to Grasty.

Plaintiff's Exhibit M, letter of Clifford L. Babcock to Grasty.

Plaintiff's Exhibit N, letter from Lewis Levy to Grasty.

Plaintiff's Exhibit F, letter from Thomas Aldwell to Grasty dated April 29, 1914.

Plaintiff's Exhibit E, photographed list of appraisal of properties by Thomas Aldwell.

Plaintiff's Exhibit FF: Statement showing assessment of shingle mills in Clallam County.

Plaintiff's Exhibit T. Assessment of Olympic Power Company's property.

Plaintiff's Exhibit CC. Written statement from Henry to Grasty.

(13) Statement as to assessment of banks filed December 11, 1915.

(14) Memo decision filed January 22, 1916.

(15) Decree rendered and entered February 3, 1916.

(16) Plaintiff's exceptions to allowance of amendment of Defendants' answer and order allowing amendments filed February 3, 1916.

(17) Plaintiff's petition to rehear and modify judgment filed March 3, 1916.

(18) Journal entry showing hearing on petition to rehear entered April 18, 1916.

(19) Memo. decision upon petition to rehear filed May 11, 1916.

(20) Order denying petition to rehear filed May 15, 1916.

(21) Plaintiff's notice to defendants of the lodgment of statement of facts, filed September 1, 1916.

(22) Plaintiff's Assignment of Errors, filed October 27, 1916.

(23), Plaintiff's petition for appeal and order allowing same.

(23½) Bond on appeal and approval thereof.

(24) Citation on Appeal and admission of service thereof by the defendants.

(25) Order of court to send up original exhibits.

(All the above, 23, 24 and 25, filed Oct. 27, 1916.)

(26) Journal entry showing adjournment of term of District Court immediately preceding the term commencing the first Tuesday in May, 1916.

(27) Order of court upon stipulation of the parties with respect to settlement of the Statement of Facts, filed October 27, 1916.

(28) This Praecept with acknowledgment of service thereon by defendants.

(29) Index to all of the above.

Dated at Seattle, Washington, this 30 day of Oct. 1916.

EARL & STEINERT,  
PETERS & POWELL,

Attorneys for Plaintiff, Appellant.

Copy of the foregoing Praecept received this 31st day of Oct., 1916.

SANDFORD C. ROSE,  
DEVILLO LEWIS,  
J. E. FROST,  
E. C. EWING,  
JONES & RIDDELL,

Attorneys for Defendants, Appellees.

Indorsed: Praecept for Transcript on Appeal.  
Filed Oct. 31, 1916.

No. 36

DEFENDANTS' PRAECEPT FOR ADDITIONAL  
RECORD  
TO THE CLERK OF THE ABOVE ENTITLED  
COURT:

You will please prepare the following additional portions of the record in the above entitled cause, and incorporate the same into the transcript of the record on appeal in the above entitled cause, to wit:

1. Defendants' answer to the amended bill of complaint filed in this court on the 20th day of November, 1914.

2. Plaintiff's motion directed against the said defendants' answer to the amended bill of complaint, entitled "Motion" and indorsed "Motion to Strike," and



filed in this court on the 30th day of November, 1914.

3. Order allowing plaintiff's motion to make more definite and certain, which was dated the 21st day of December, 1914.

SANFORD C. ROSE, Prosecuting Attorney.  
DEVILLO LEWIS, Deputy Prosecuting Attorney.

J. E. FROST,  
E. C. EWING,  
JONES & RIDDELL,

Attorneys for Defendants.

Indorsed: Defendants' Praecipe for Additional Record. Filed November 8, 1916.

IN THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT  
OF WASHINGTON NORTHERN  
DIVISION

No. 36

CLALLAM LUMBER COMPANY, a corporation,  
Plaintiff, Appellant,

vs.

CLALLAM COUNTY, a municipal corporation, and  
Clifford L. Babcock, Treasurer,

Defendants, Appellees

UNITED STATES OF AMERICA

to

CLALLAM COUNTY, a municipal corporation and  
Clifford L. Babcock, Treasurer, Defendants

and Appellees

CITATION

A GREETING:

You and each of you are hereby notified that in a certain suit in the United States District Court for the Western District of Washington, Northern Division, wherein Clallam Lumber Company, a corporation is plaintiff and the above named Clallam County and Clifford L. Babcock, Treasurer, are defendants, an appeal has been allowed the plaintiff therein to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in said United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, state of California, thirty days after the date of this citation, to show cause, if any there be why the order and decree appealed from should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable E. E. Cushman, Judge of the United States District Court for the Western District of Washington, sitting in the Northern Division, this 27th day of October, 1916.

EDWARD E. CUSHMAN,  
United States District Judge for the Western District of Washington, sitting in the Northern Division.

Received a copy of the above and foregoing Citation this 27th day of Oct., 1916.

SANFORD C. ROSE,  
DEVILLO LEWIS,  
J. E. FROST,  
E. C. EWING,  
R. S. JONES,  
C. RIDDELL,

Attorneys for above named appellees.

Indorsed: No. 36. In the District Court of the United States, Western District of Washington, Northern Division. Clallam Lumber Company, a corporation, Plaintiff, vs. Clallam County, et al., Defendants. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. Peters & Powell. Earle & Steinert. Attorneys for Plaintiff. Rooms 546-551 New York Building, Seattle, Washington.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
WASHINGTON, NORTHERN DIVISION  
CLALLAM LUMBER COMPANY, a Corporation,  
Plaintiff,

vs.

CLALLAM COUNTY, a Municipal Corporation, and  
CLIFFORD L. BABCOCK, Treasurer,  
Defendants.

No. 36

IN EQUITY  
CERTIFICATE OF CLERK TO TRANSCRIPT OF  
RECORD

United States of America, Western District of Wash-  
ington, ss.:

I, Frank L. Crosby, clerk of the United States District Court, for the Western District of Washington, do hereby certify 854 printed pages numbered from 1 to 854 inclusive, to be a full, true, correct and complete copy of so much of the record, papers, exhibits and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that said printed pages together with the original exhibits separately certified, constitute the record herein on appeal from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be the full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the complainants for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record certificate or return 3509 folios at 15c .....	\$ 526.35
Certificate of Clerk to transcript of record, 4 folios at 15c .....	.60
Seal to said Certificate .....	.20
Certificate of Clerk to Original Exhibits, 3 folios at 15c .....	.45
Seal to said Certificate .....	.20
Statement of cost of printing said transcript of record, collected and paid.....	801.80
Total .....	<u>\$1329.60</u>

I hereby certify that the above cost for preparing and certifying and printing record, amounting to \$1329.60 has been paid to me by counsel for complainants.

I further certify that I hereby attach and herewith transmit the original citation issued in this cause and the original Order of Court extending appellants' time to file record on appeal.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 20th day of December, 1916.

FRANK L. CROSBY,  
Clerk United States District Court.

(Seal)